IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

ADVANCED CLUSTER SYSTEMS, INC.,)
Plaintiff,) Redacted - Public Version
v.) C.A. No. 19-2032-MN-CJE
NVIDIA CORPORATION, NVIDIA SINGAPORE PTE. LTD., and NVIDIA INTERNATIONAL, INC.,	
Defendants.)

LETTER TO THE HONORABLE CHRISTOPHER J. BURKE FROM NATHAN R. HOESCHEN

OF COUNSEL:
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Cheryl Burgess
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Dated: September 13, 2022

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September 13, 2022

BY CM/ECF & HAND DELIVERY

The Honorable Christopher J. Burke U.S. District Court for the District of Delaware 844 North King Street Wilmington, DE 19801



Redacted - Public Version

Re: Advanced Cluster Systems, Inc. v. NVIDIA Corp., C.A. No. 19-2032-MN-CJB

Dear Judge Burke:

ACS files this letter brief in opposition to the NVIDIA Defendants' motion to compel (D.I. 198) (the "Motion"), which is procedurally and substantively deficient and should be denied.

I. NVIDIA's Motion Is Premature And Improper

NVIDIA did not properly meet and confer with ACS. NVIDIA did not apprise ACS of the issues raised in this motion until the eleventh hour, summarily adding them to a meet and confer scheduled for the purpose of discussing the Knobbe Martens subpoena. (Ex. 3 at 1).

NVIDIA also requested ACS's tax

returns for the first time. *Id.* at ¶ 5. Although, *NVIDIA*'s counsel proposed during the meet and confer that the Parties agree on more time to resolve ACS's outstanding issues so as to not raise them prematurely (*Id.* at ¶ 7), NVIDIA declined to do so with respect to its late-identified disputes, choosing to instead bring its own premature motion. *Compare* Ex. 2 at 1–2; Ex. 4 *with* Ex. 5. The Court should deny the requested relief because NVIDIA did not properly meet and confer. *Masimo Corp. v. Philips Elecs. N. Am. Corp.*, 2010 WL 1135739, at *1–2 (D. Del. Mar. 23, 2010); *see also* Fed. R. Civ. P. 37(a)(1).

NVIDIA violated the Protective Order. The *Stipulated* Protective Order, requires that "the Receiving Party shall not use or disclose a document or information for which a claim of privilege ... is made pursuant to this paragraph for any purpose until the matter is resolved ... by a decision of this court." D.I. 24 at 34–35; *see also* Fed. R. Civ. P. 26(b)(5)(B). Sections I.B and I.C of NVIDIA's Motion violates the parties agreement by using and disclosing the contents of the clawed back documents. NVIDIA claims its "descriptions reflect[] the [P]arties' discussions and ACS'[s] log entries." A review of ACS's privilege logs confirms this is not accurate. *See* Exs. D–E, N–O. Nor did the Parties discuss the documents' contents at the meet and confer. Burgess Decl. at ¶ 4. The only possible source for NVIDIA's descriptions is the documents themselves. Ex. 1. NVIDIA's violation is troubling given its delayed, and only partial, affirmation of compliance with the Protective Order. Exs. B–C; Ex. 6 at 1; Ex. 7. The Court should accordingly

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strike §§ I.B and I.C of the Motion and deny the relief requested therein.

II. The Clawed Back Documents Are Privileged; ACS's Claw Backs Were Proper

Attorney-client privilege extends to privileged persons. See WebXchange Inc. v. Dell Inc., 264 F.R.D. 123, 126 (D. Del. 2010). "The client, the attorneys, and any of their agents that help facilitate attorney-client communications or legal representation are included within 'privilege persons." Id. In WebXchange, the court found disclosures to employees of a company were privileged because the disclosures were "made within the context of their employment capacities, or in the context of [] assisting [the declarant] in obtaining legal advice." Id. The work product doctrine applies where a document "can fairly be said to have been prepared or obtained because of the prospect of litigation." Moore v. Plains All Am. GP, LLC, 2015 WL 5545306, at *4 (E.D. Pa. Sept. 18, 2015). This "may extend to documents prepared in anticipation of litigation by a party or its representative." Id. The common interest doctrine is an exception to the rule that voluntary disclosure to a third-party of privileged information waives the privilege." TC Tech. LLC v. Sprint Corp., 2018 WL 6584122, at *2 (D. Del. Dec. 13, 2018). Common interest "protects all communications shared within a proper community of interest." Id. (internal quotations omitted). "[T]he common interest doctrine does not strictly require that communications be between separate attorneys. It is sufficient to show that the client and third[-]parties shared an interest that is 'identical, not similar,' and 'legal, not solely commercial." Id. at *3.

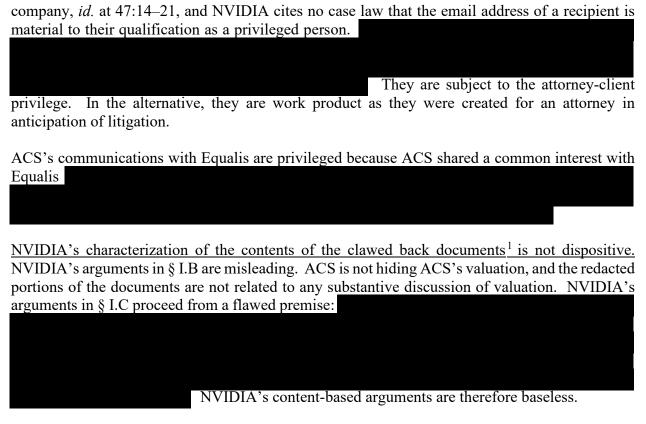
Communications within ACS and with Equalis are privileged. At all times from May 2012 to January 2019, Mr. Bancroft was on ACS's Business Advisory Board. Ex. 8 at ¶ 33; see also Ex. 9 at -922. In exchange for Mr. Bancroft's service, ACS awarded Mr. Bancroft options to purchase ACS shares. Ex. 9 at -914; Ex. 10 at 159:11–16. Mr. Bancroft undoubtedly plays a role in ACS. NVIDIA itself highlighted Mr. Bancroft's role at ACS during his deposition. Ex. 10 at 159:4–19. Mr. Tannenbaum's communications with Mr. Bancroft were in the scope of Mr. Bancroft's relationship with ACS. See WebXchange, 264 F.R.D. at 126.

They are therefore subject to the attorney-client privilege. In the alterative, even if not a privileged person, ACS's communications with Mr. Bancroft contain privileged information protected by the common interest doctrine. Mr. Bancroft is an ACS stock option holder, and has a common interest with ACS

See Wise v. Biowish Techs., Inc., 2019 WL 4344273, at *5 (D. Del. Sept. 12, 2019) ("Because [purported third-party] and [Plaintiff] were both stockholders . . . an argument could be made that they shared a 'common interest privilege."); TC Tech., 2018 WL 6584122, at *4–5 (finding communications were protected by common interest doctrine as "the interest here in acquiring and enforcing a patent is a legal interest" and "substantively identical"). NVIDIA itself made this point during Mr. Bancroft's deposition. See Ex. 10 at 161:2–18.

Ms. Tannenbaum was the CFO of ACS from January 2017 to April 2018, *i.e.*, a privileged person. *See WebXchange*, 264 F.R.D. at 126. NVIDIA never argues otherwise, and repeatedly highlighted Ms. Tannenbaum's role at ACS during her deposition. *See, e.g.*, Ex. 11 at 14:14–18:22, 73:15–25, 153:18–23, 154:5–9, 156:4–9. Ms. Tannenbaum's email address is immaterial. AFA was her

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NVIDIA's requested relief is also improper for the additional reason that NVIDIA already used its full seven hours of deposition time with both Mr. Tannenbaum and Dr. Dauger, and should be denied for that reason as well.

III. NVIDIA's Request For Tax Returns Is Improper And Regardless, Moot

NVIDIA mischaracterizes this dispute as a general request for financial records. This dispute crystalized during the meet and confer into a limited dispute over production of ACS's tax returns for the years 2011-2018. Ex. 3 at 1; Burgess Decl. at ¶¶ 5–6.² ACS confirmed that it had performed a reasonable search for ACS financial records and produced the resulting non-privileged documents. Burgess Decl. at ¶ 6. NVIDIA then, for the first time, requested that ACS produce its tax returns and improperly sought relief from the court that same day. ACS is willing to perform a reasonable search for and production of its tax returns for 2011-2018. NVIDIA's requested relief should therefore be denied as moot.

Although ACS disagrees that its financial documents are relevant, it has already produced the available company financial documents.

¹ If the Court desires further detail, ACS invites the Court to conduct an *in camera* review.

² NVIDIA's argument that ACS put "the sales of [ACS's] products" at issue also mischaracterizes the facts by truncating Mr. Tannenbaum's full response

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Respectfully submitted,
/s/ Nathan R. Hoeschen
Nathan R. Hoeschen (No. 6232)

cc: Clerk of the Court (by CM/ECF & Hand Delivery)
Counsel of Record (by CM/ECF & Email)

EXHIBIT 1

From: Ben Shiroma

To: <u>Williamson, Carrie</u>; <u>NVIDIA-ACS-DLA</u>

Cc: ACSService

Subject: RE: ACS v. NVIDIA - improper use and disclosure of clawed back documents in D.I. 198

Date: Tuesday, September 13, 2022 11:55:00 AM

Carrie,

ACS disagrees with NVIDIA's position. Despite your claim that NVIDIA "relies on those meet and confer discussions, separate of the documents," you do not specifically identify any discussions that can support NVIDIA's improper descriptions. Indeed, the one specific statement you reference, "internal discussions," does **not** disclose the clawed back documents contents at all. ACS also disagrees that NVIDIA can properly claim prejudice from the timing of ACS's privilege logs, ACS produced its privilege logs in accordance with the time table the Parties agreed upon over the holiday weekend. Any complaint NVIDIA has with the timing of its motion is its own doing. NVIDIA chose to proceed with its motion before the issue had sufficiently crystalized to bring to the Court's attention.

ACS also disagrees with your characterization of this as an "orchestrated diversion." Your own statements in the portions of the deposition transcript you cite restate the impropriety of using the clawed back documents. Tr. at 252:12–18, 254:1–6. NVIDIA selectively does not acknowledge that Mr. Gurka acquiesced your approach and restated his objection that NVIDIA had run out of time to question Mr. Tannebaum. Tr. at 254:9–14. NVIDIA now improperly seeks to rely on its purported inability to use the clawed back information during the deposition to seek further deposition time (despite already using the entire allotted seven hours), while at the same time using and disclosing the clawed back information in its briefing.

Best, Ben

Ben Shiroma

Associate

Ben.Shiroma@knobbe.com

310-601-1269 Direct

Knobbe Martens

1925 Century Park East, Suite 600 Los Angeles, CA 90067

https://www.knobbe.com/attorneys/ben-k-shiroma

From: Williamson, Carrie < Carrie. Williamson@us.dlapiper.com>

Sent: Monday, September 12, 2022 11:45 AM

To: Ben Shiroma <Ben.Shiroma@knobbe.com>; NVIDIA-ACS-DLA <NVIDIA-ACS-

DLA@us.dlapiper.com>

Cc: ACSService < ACSService@knobbe.com>

Subject: RE: ACS v. NVIDIA - improper use and disclosure of clawed back documents in D.I. 198

Ben,

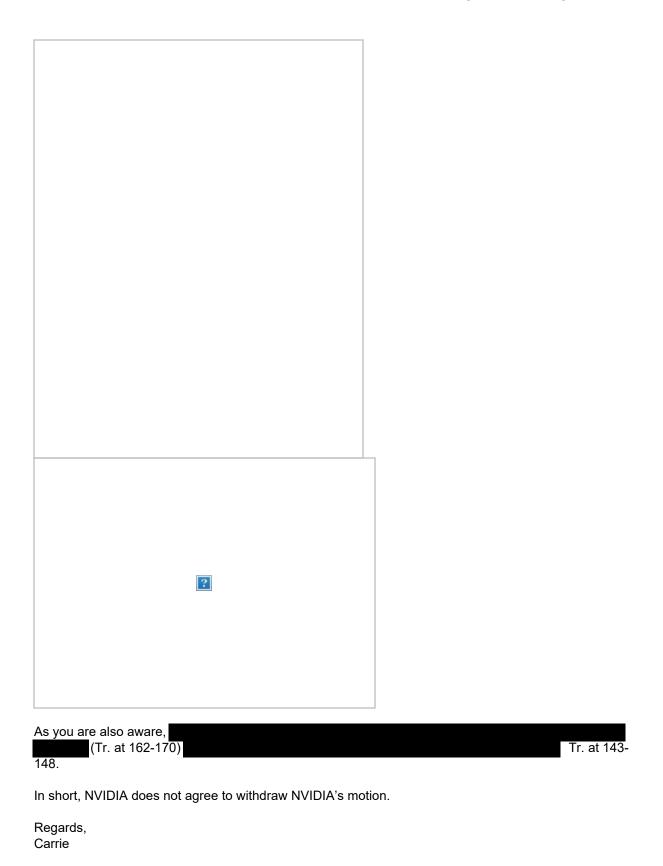
We entirely disagree with ACS' characterization that NVIDIA "used and disclosed the contents" of documents clawed back by ACS.

First, the parties met and conferred regarding this dispute, and NVIDIA relies on those meet and confer discussions, separate of the documents, for its motion. During that meet and confer session, ACS stated that the various categories of documents were "internal ACS communications." The fact that a document is an internal communication does not make the document privileged. In relying on ACS' general verbal characterization as well as its belatedly-produced privilege log and other non-clawed back materials, NVIDIA has carefully avoided describing the contents of any of the clawed back documents themselves.

Second, your message points to Fed. R. Civ. P. 26(b)(5)(B), which states a party "may promptly present the information to the court under seal for a determination of the claim." ACS seems to be taking the contrary position that NVIDIA cannot present any information to the court, no matter if general and detached from what the documents describe. Nor does your correspondence identify any particular improper disclosure of the documents' contents, because we have not discussed them. ACS is not offering to provide the documents *in camera* in order to facilitate any particular proposed resolution regarding NVIDIA's briefing.

This seems to be an orchestrated diversion to prevent the Court from evaluating ACS' untenable claims of privilege. Indeed, ACS invited NVIDIA to "use" the documents it clawed back, further calling into question whether it really believes that the clawed back documents are privileged. After all of ACS' clawback letters (dated August 23 and 25) and after NVIDIA's counsel stated that it was keeping Mr. Tannenbaum's August 26 deposition open because there was a dispute over documents that would have been used during the deposition were privileged, counsel for ACS asked counsel for NVIDIA to use those clawed back documents during the deposition:





From: Ben Shiroma < Ben.Shiroma@knobbe.com Sent: Wednesday, September 7, 2022 5:27 PM

To: Williamson, Carrie < <u>Carrie.Williamson@us.dlapiper.com</u>>; NVIDIA-ACS-DLA < <u>NVIDIA-ACS-DLA@us.dlapiper.com</u>>

Cc: ACSService < ACSService@knobbe.com>

Subject: ACS v. NVIDIA - improper use and disclosure of clawed back documents in D.I. 198

A EXTERNAL MESSAGE

Carrie,

In its motion to compel (D.I. 198), NVIDIA used and disclosed the contents of documents clawed back by ACS. Both the Protective Order and the Federal Rules prohibit a party from using and disclosing clawed back documents during the pendency of a motion to compel those documents. D.I. 24 at 34–35; Fed. R. Civ. P. 26(b)(5)(B). ACS requests that NVIDIA immediately withdraw its motion, which improperly used and disclosed the contents of the privileged documents in dispute (D.I. 198). NVIDIA may, if it wishes, re-file its motion after removing the portions using and disclosing the contents of the clawed back documents in dispute. NVIDIA may not make any other changes to its re-filed motion.

ACS reserves all rights to seek relief associated with NVIDIA's improper use and disclosure of clawed back documents.

Best, Ben

Ben Shiroma

Associate
Ben.Shiroma@knobbe.com
310-601-1269 Direct

Knobbe Martens

1925 Century Park East, Suite 600 Los Angeles, CA 90067 https://www.knobbe.com/attorneys/ben-k-shiroma

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EXHIBIT 2

From: O"Byrne, Stephanie

To: <u>Cheryl Burgess</u>; <u>Jon Gurka</u>; <u>Williamson, Carrie</u>

Cc: NVIDIA-ACS-DLA; Lit ZTANNL.017L; Karen Elizabeth Keller; Nathan R. Hoeschen - Shaw Keller LLP

(nhoeschen@shawkeller.com); emily.dibenedetto@shawkeller.com

Subject: RE: ACS v. NVIDIA: NVLink documents

Date: Friday, August 26, 2022 3:01:41 PM

Attachments: image001.png

Hi Cheryl,

As we discussed today, NVIDIA is not going to provide an additional witness on firmware, so this issue is ripe and we don't agree it should be held in abeyance or otherwise raised after the close of discovery.

We agreed to look for documents and agree that this issue is not ripe, may be resolved soon and can be tabled as you propose below.

Regards, Stephanie

Stephanie E. O'Byrne

Of Counsel

T +1 302 468 5645 F +1 302 691 4745

stephanie.obyrne@us.dlapiper.com



From: Cheryl Burgess < Cheryl. Burgess@knobbe.com>

Sent: Friday, August 26, 2022 5:19 PM

To: Jon Gurka <Jon.Gurka@knobbe.com>; Williamson, Carrie <Carrie.Williamson@us.dlapiper.com>

Cc: NVIDIA-ACS-DLA <nvidia-acs-dla@dlapiper.com>; Lit ZTANNL.017L

<LitZTANNL.017L@knobbe.com>; Karen Elizabeth Keller <kkeller@shawkeller.com>; Nathan R. Hoeschen - Shaw Keller LLP (nhoeschen@shawkeller.com) <nhoeschen@shawkeller.com>; emily.dibenedetto@shawkeller.com

Subject: RE: ACS v. NVIDIA: NVLink documents

! EXTERNAL MESSAGE

Clayton and Peter,

Thank you for discussing the three issues contained in our proposed letter to the Court at today's meet and confer. We understand that you are going to confer with NVIDIA next week about the documents requested in the first and third identified issues. We view the second issue, which

relates to NVIDIA's 30(b)(6) deponents, as related to the first issue. In light of your commitment that you will investigate the documents that are the subjects of first and third issues identified for the Court in the proposed letter, ACS proposes that the parties agree that ACS need not file the proposed letter with the Court today to preserve its rights to pursue these three discovery issues.

On our call the parties agreed to follow up call next Friday regarding the draft product and code stipulation. We propose following up on NVIDIA's investigation into the additional requested documents at that time. If the parties are at an impasse at that time, the parties will then proceed with a joint letter to the Court. Please confirm that NVIDIA agrees with this approach and will not assert that these discovery disputes are waived or otherwise untimely if brought to the court within a reasonable time after the parties' pending meet and confer.

Best, Cheryl

Cheryl Burgess

Partner

949-721-2935 Direct

Knobbe Martens

From: Jon Gurka < Jon. Gurka@knobbe.com> **Sent:** Thursday, August 25, 2022 4:25 PM

To: Williamson, Carrie < <u>Carrie.Williamson@us.dlapiper.com</u>>

Cc: NVIDIA-ACS-DLA < <u>nvidia-acs-dla@dlapiper.com</u>>; Lit ZTANNL.017L

<<u>LitZTANNL.017L@knobbe.com</u>>; Karen Elizabeth Keller <<u>kkeller@shawkeller.com</u>>; Nathan R. Hoeschen - Shaw Keller LLP (nhoeschen@shawkeller.com) < nhoeschen@shawkeller.com>; emily.dibenedetto@shawkeller.com

Subject: RE: ACS v. NVIDIA: NVLink documents

Carrie -

I am following up on our correspondence regarding NVIDIA's production of documents referred to during their 30(b)(6) depositions and NVIDIA's failure to provide a 30(b)(6) witness on firmware for the accused products.

We have not heard back regarding your availability to meet and confer on these issues today. As I mentioned before, NVIDIA's failure to respond to ACS's outstanding requests is highly prejudicial and impacts ACS's ability to complete its infringement contentions due next Thursday, September 1, 2022.

We ask that NVIDIA confirm it will immediately produce the requested documents and provide a 30(b)(6) corporate designee on Topics 1 and 8 related to firmware. Absent NVIDIA's confirmation, we expect NVIDIA to be prepared to discuss these issues at the meet and confer scheduled for tomorrow.

Should the parties be unable to reach agreement, we are attaching a proposed joint letter for a

discovery teleconference. We are waiting to file the letter pending agreement that we are at an impasse at tomorrow's meet and confer.

Please confirm that NVIDIA will not use the delay in meeting and conferring to argue against a potential extension for ACS's infringement contention deadline.

Jon

From: Cheryl Burgess < Cheryl.Burgess@knobbe.com>

Sent: Wednesday, August 24, 2022 9:51 PM

To: Williamson, Carrie < <u>Carrie.Williamson@us.dlapiper.com</u>>

Cc: NVIDIA-ACS-DLA < <u>nvidia-acs-dla@dlapiper.com</u>>; Lit ZTANNL.017L

 $<\underline{\text{LitZTANNL.017L@knobbe.com}}; \text{ Karen Elizabeth Keller} < \underline{\text{kkeller@shawkeller.com}}; \text{ Nathan R. Hoeschen - Shaw Keller LLP } (\underline{\text{nhoeschen@shawkeller.com}}) < \underline{\text{nhoeschen@shawkeller.com}};$

emily.dibenedetto@shawkeller.com; Jon Gurka < Jon.Gurka@knobbe.com >

Subject: RE: ACS v. NVIDIA: NVLink documents

Carrie,

Further to the issues identified in Mr. Gu	<mark>ırka's email below,</mark> we have	also been reviewing NVIDIA's	
production for	described by	during his deposition. We	
have not been able to identify this	in the production.		
This information is highly relevant to indirect infringement. Absent written			
confirmation from you by tomorrow morning that NVIDIA will produce			
we will deem the parties are at an impasse on this issue too.			

Best, Cheryl

Cheryl Burgess

Partner

949-721-2935 Direct

Knobbe Martens

From: Jon Gurka < <u>Jon.Gurka@knobbe.com</u>>
Sent: Wednesday, August 24, 2022 1:54 PM

To: Williamson, Carrie < <u>Carrie.Williamson@us.dlapiper.com</u>>

Cc: NVIDIA-ACS-DLA < nvidia-acs-dla@dlapiper.com; Lit ZTANNL.017L

<<u>LitZTANNL.017L@knobbe.com</u>>; Karen Elizabeth Keller <<u>kkeller@shawkeller.com</u>>; Nathan R. Hoeschen - Shaw Keller LLP (<u>nhoeschen@shawkeller.com</u>) <<u>nhoeschen@shawkeller.com</u>>;

emily.dibenedetto@shawkeller.com

Subject: RE: ACS v. NVIDIA: NVLink documents

Importance: High

Carrie -

I am following up on Ms. Burgess' email from last evening, as well as Mr. Kowallis' email from August 21 regarding NVIDIA's failure to provide a 30(b)(6) witness on firmware for the accused products. Further, my understanding is that we have requested access to the NVIDIA source code computer.

All of these issues are related and urgent because it is apparent to ACS that NVIDIA has not provided highly relevant discovery regarding the accused products and the fact discovery cutoff is in two days.

If you cannot provide us with a time to meet and confer today, or confirm that you are producing all of the requested information below and a corporate designee on Topics 1 and 8 related to firmware, we will have no choice but to file a motion to compel and deem the parties at an impasse.

Moreover, NVIDIA's failure to provide this highly relevant discovery is prejudicial and will significantly impact ACS's ability to prepare final infringement contentions next week. We reserve all of our rights to seek appropriate relief from the Court.

We look forward to hearing from you as soon as possible.

Jon

From: Cheryl Burgess < Cheryl.Burgess@knobbe.com>

Sent: Tuesday, August 23, 2022 7:52 PM

To: Williamson, Carrie < Carrie <a href="mailto:Carrie.

Cc: NVIDIA-ACS-DLA < <u>nvidia-acs-dla@dlapiper.com</u>>; Lit ZTANNL.017L

<<u>LitZTANNL.017L@knobbe.com</u>>; Williamson, Carrie <<u>Carrie.Williamson@us.dlapiper.com</u>>; Nathan

R. Hoeschen - Shaw Keller LLP (nhoeschen@shawkeller.com) nhoeschen@shawkeller.com)

Subject: ACS v. NVIDIA: NVLink documents

Counsel,

We request immediate production of the following documents referred to by during his deposition. These documents are highly relevant to the operation of the accused GPU chips and NVLink, and we have not identified copies in NVIDIA's current production. NVIDIA's failure to produce such highly relevant documents is extremely prejudicial to ACS. Please confirm by COB tomorrow that NVIDIA will be producing these documents, or provide a time to meet and confer tomorrow regarding NVIDIA's refusal to do so.





Partner

Chervl.Burgess@knobbe.com

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EXHIBIT 3

From: <u>Stephen Larson</u>

To: Nelson, Peter; Williamson, Carrie; O"Byrne, Stephanie; Karen Keller
Cc: Cheryl Burgess; NVIDIA-ACS-DLA; ACSService; Nate Hoeschen

Subject: RE: ACS v. NV - Deposition Scheduling and Format

Date: Friday, August 26, 2022 12:50:01 PM

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Counsel.

Attachments:

Thank you for meeting and conferring on the Knobbe and individual Knobbe witness deposition issues. As we discussed, we do not oppose NVIDIA taking these depositions after the close of fact discovery after the parties' 30(b)(6) issues are resolved. Thus, we believe NVIDIA's cross-motion as to the individual witnesses is unnecessary.

We are also disappointed by NVIDIA's attempt to have the last brief on these issues. As I mentioned, if we had brought a motion to quash in the Central District of California, we would have been entitled to a 25-page reply. We proposed bringing the issues directly to Judge Burke to facilitate and streamline the resolution of the parties' 30(b)(6) issues. That being said, we are prepared to agree to your briefing proposal in the interest of resolving these disputes as soon as possible under Judge Burke's discovery procedures. We will circulate an updated letter that includes a reference to the parties' meet and confer today.

Best, Steve

From: Nelson, Peter < Peter. Nelson@us.dlapiper.com>

Sent: Thursday, August 25, 2022 7:17 AM

To: Stephen Larson <Stephen.Larson@knobbe.com>; Williamson, Carrie

<Carrie.Williamson@us.dlapiper.com>; O'Byrne, Stephanie <Stephanie.OByrne@us.dlapiper.com>;

Karen Keller < kkeller@shawkeller.com>

Cc: Cheryl Burgess <Cheryl.Burgess@knobbe.com>; NVIDIA-ACS-DLA <NVIDIA-ACS-DLA@us.dlapiper.com>; ACSService <ACSService@knobbe.com>; Nate Hoeschen <nhoeschen@shawkeller.com>

Subject: Re: ACS v. NV - Deposition Scheduling and Format

Hi Stephen,

We are generally available tomorrow after 12:00 PM EST. We'd like to address all outstanding issues including: (a) ACS' request to claw back certain documents; and (b)

Best regards, Peter

Peter Nelson

Associate

T +1 202 799 4092 M +1 301 346 1357 peter.nelson@us.dlapiper.com

DLA Piper LLP (US) dlapiper.com



From: Stephen Larson <<u>Stephen.Larson@knobbe.com</u>>

Sent: Wednesday, August 24, 2022 10:47 PM

To: Williamson, Carrie < Carrie < Carrie.Williamson@us.dlapiper.com; Karen Keller keller.com>

Cc: Nelson, Peter < <u>Peter.Nelson@us.dlapiper.com</u>>; Cheryl Burgess < <u>Cheryl.Burgess@knobbe.com</u>>; NVIDIA-ACS-DLA < <u>NVIDIA-ACS-DLA@us.dlapiper.com</u>>; ACSService < <u>ACSService@knobbe.com</u>>;

Nate Hoeschen < nhoeschen@shawkeller.com>

Subject: Re: ACS v. NV - Deposition Scheduling and Format

EXTERNAL MESSAGE

Carrie,

Thank you for your email. Let's meet and confer on NVIDIA's motion and proposed briefing schedule on Friday. Please let us know when NVIDIA is available.

Many thanks, Steve

From: Williamson, Carrie < <u>Carrie.Williamson@us.dlapiper.com</u>>

Sent: Wednesday, August 24, 2022 6:44:29 PM

To: Stephen Larson < <u>Stephen.Larson@knobbe.com</u>>; O'Byrne, Stephanie

<<u>Stephanie.OByrne@us.dlapiper.com</u>>; Karen Keller <<u>kkeller@shawkeller.com</u>>

Cc: Nelson, Peter < Peter < Peter.Nelson@us.dlapiper.com; ACSService < ACSService@knobbe.com; ACSService < ACSService@knobbe.com;

Nate Hoeschen < nhoeschen@shawkeller.com>

Subject: RE: ACS v. NV - Deposition Scheduling and Format

Stephen,

We understand that Knobbe is refusing to produce Mr. Cannon and Mr. Smemoe for the depositions until the dispute regarding Knobbe's Rule 45 subpoena is resolved. We had those depositions on calendar for August 16 and 18 for the individuals in their personal capacities, and Knobbe cancelled those depositions. We understand that Knobbe and Mr. Cannon and Mr. Smemoe all agree that Mr.

Cannon and Mr. Smemoe and Knobbe *will* be made available for deposition and the issue is timing (what date the depositions will occur) and scope (scope of the Rule 45 subpoena topics). Is that correct? Given that (1) discovery is closing, (2) there is no date set for any of those 3 depositions, (3) Knobbe may seek to withdraw its motion to quash and then refuse to provide any depositions following the close of fact discovery, and (4) NVIDIA may need to amend its final contentions related to these depositions, NVIDIA needs to preserve its ability to seek discovery from Knobbe, Mr. Cannon and Mr. Smemoe and is thus cross-moving to compel to ensure that NVIDIA may be able to depose all 3 witnesses (Knobbe, Mr. Cannon, and Mr. Smemoe) following close of fact discovery when the dispute is resolved. In other words, part of the relief that NVIDIA will ask for with the court is that Mr. Cannon and Mr. Smemoe appear for deposition following close of fact discovery (along with Knobbe). Because NVIDIA is asking for relief from the court, it is cross-moving. I hope this clears up any confusion.

Thanks, Carrie

From: Stephen Larson <<u>Stephen.Larson@knobbe.com</u>>

Sent: Wednesday, August 24, 2022 2:42 PM

To: O'Byrne, Stephanie < <u>Stephanie.OByrne@us.dlapiper.com</u>>; Karen Keller

<<u>kkeller@shawkeller.com</u>>; Williamson, Carrie <<u>Carrie.Williamson@us.dlapiper.com</u>>

Cc: Nelson, Peter < Peter < Peter < Peter.Nelson@us.dlapiper.com; Cheryl Burgess < Cheryl.Burgess@knobbe.com; NVIDIA-ACS-DLA@us.dlapiper.com; ACSService < ACSService@knobbe.com;

Nate Hoeschen < nhoeschen@shawkeller.com >

Subject: RE: ACS v. NV - Deposition Scheduling and Format

EXTERNAL MESSAGE

Counsel,

We object to NVIDIA's inclusion of its motions to compel and, in particular, NVIDIA's motion to compel the individual depositions of Ted Cannon and Lance Smemo. NVIIDA never suggested it had any issue with these individual depositions proceeding after the parties' 30(b)(6) issues are resolved. The parties have not met and conferred on NVIDIA's motions and it is not clear to us what relief NVIDIA now seeks: is NVIDIA seeking the individual depositions before the Court resolves the parties' 30(b)(6) issues? If not, NVIDIA's motion is unnecessary. If NVIDIA seeks to depose these individuals before the Court resolves the parties' 30(b)(6) issues, Knobbe Martens and ACS will oppose such a motion and seek a protective order on such discovery.

If NVIDIA intends to bring its motions, we are available to meet and confer this Friday before 3 p.m. EST on (1) NVIDIA's motions and (2) Knobbe Martens and ACS's motion for a protective order as to the individual depositions of Ted Cannon and Lance Smemo. We can discuss NVIDIA's new proposal regarding briefing at that meet and confer.

Best, Steve

From: O'Byrne, Stephanie < Stephanie.OByrne@us.dlapiper.com>

Sent: Wednesday, August 24, 2022 9:45 AM

To: Karen Keller < <u>kkeller@shawkeller.com</u>>; Williamson, Carrie

<<u>Carrie.Williamson@us.dlapiper.com</u>>

Cc: Nelson, Peter < <u>Peter.Nelson@us.dlapiper.com</u>>; Stephen Larson

<<u>Stephen.Larson@knobbe.com</u>>; Cheryl Burgess <<u>Cheryl.Burgess@knobbe.com</u>>; NVIDIA-ACS-DLA

< NVIDIA-ACS-DLA@us.dlapiper.com >; ACSService < ACSService@knobbe.com >; Nate Hoeschen

<nhoeschen@shawkeller.com>

Subject: RE: ACS v. NV - Deposition Scheduling and Format

Karen,

Please see the attached revised motion with NVIDIA's addition of its cross-motion and proposal reconsolidated letter briefing. If you'd like to discuss, please let us know. Otherwise please confirm you will proceed to file today; I am signed off with these additions.

Stephanie

Stephanie E. O'Byrne

Of Counsel

T +1 302 468 5645 F +1 302 691 4745

stephanie.obyrne@us.dlapiper.com



From: Karen Keller < kkeller@shawkeller.com > Sent: Wednesday, August 24, 2022 10:19 AM

To: Williamson, Carrie < <u>Carrie.Williamson@us.dlapiper.com</u>>

Cc: Nelson, Peter < <u>Peter.Nelson@us.dlapiper.com</u>>; Stephen Larson

<<u>Stephen.Larson@knobbe.com</u>>; Cheryl T. Burgess - Knobbe Martens Olson & Bear LLP (cheryl.burgess@knobbe.com); NVIDIA-ACS-DLA nvivoleness@knobbe.com); ACSService@knobbe.com; Nate Hoeschen nhoeschen@shawkeller.com)

Subject: FW: ACS v. NV - Deposition Scheduling and Format



Carrie:

Just following up on this.

Best, Karen

From: Karen Keller < kkeller@shawkeller.com > Sent: Monday, August 22, 2022 6:03 AM

To: Williamson, Carrie < Carrie. Williamson@us.dlapiper.com >

Cc: Nelson, Peter < <u>Peter.Nelson@us.dlapiper.com</u>>; Stephen Larson

<<u>Stephen.Larson@knobbe.com</u>>; Cheryl Burgess <<u>Cheryl.Burgess@knobbe.com</u>>; NVIDIA-ACS-DLA

<<u>NVIDIA-ACS-DLA@us.dlapiper.com</u>>; ACSService <<u>ACSService@knobbe.com</u>>; Nate Hoeschen

<nhoeschen@shawkeller.com>

Subject: Re: ACS v. NV - Deposition Scheduling and Format

Attached.

~Karen

From: Williamson, Carrie < <u>Carrie.Williamson@us.dlapiper.com</u>>

Date: Friday, August 19, 2022 at 4:28 PM **To:** Karen Keller < kkeller@shawkeller.com >

Cc: Nelson, Peter < <u>Peter.Nelson@us.dlapiper.com</u>>, Stephen Larson

<<u>Stephen.Larson@knobbe.com</u>>, Cheryl Burgess <<u>cheryl.burgess@knobbe.com</u>>, NVIDIA-ACS-

DLA Nate ACSService@knobbe.com>, Nate

Hoeschen <nhoeschen@shawkeller.com>

Subject: RE: ACS v. NV - Deposition Scheduling and Format

Karen – please provide a word version. Thanks. We intend to cross move to compel.

Thanks, Carrie

From: Karen Keller < kkeller@shawkeller.com >

Sent: Friday, August 19, 2022 1:24 PM

To: Williamson, Carrie < Carrie. Williamson@us.dlapiper.com >

Cc: Nelson, Peter < <u>Peter.Nelson@us.dlapiper.com</u>>; Stephen Larson

<<u>Stephen.Larson@knobbe.com</u>>; Cheryl Burgess <<u>cheryl.burgess@knobbe.com</u>>; NVIDIA-ACS-DLA

NVIDIA-ACS-DLA@us.dlapiper.com; ACSService ACSService@knobbe.com; Nate Hoeschen

<nhoeschen@shawkeller.com>

Subject: Re: ACS v. NV - Deposition Scheduling and Format



Attached is a proposed letter. Let me know if ok to file.

Karen Keller

On Aug 19, 2022, at 2:22 PM, Williamson, Carrie < Carrie.Williamson@us.dlapiper.com wrote:

Stephen,

As Peter requested below, please provide the draft letter for a request for a teleconference for Judge Burke.

Thanks, Carrie

From: Nelson, Peter < <u>Peter.Nelson@us.dlapiper.com</u>>

Sent: Wednesday, August 17, 2022 7:18 AM

To: Stephen Larson < <u>Stephen.Larson@knobbe.com</u>>; Williamson, Carrie

<<u>Carrie.Williamson@us.dlapiper.com</u>>; Cheryl Burgess <<u>Cheryl.Burgess@knobbe.com</u>>

Cc: NVIDIA-ACS-DLA < NVIDIA-ACS-DLA@us.dlapiper.com >; Karen Elizabeth Keller < kkeller@shawkeller.com >; ACSService < ACSService@knobbe.com >; Nathan R.

Hoeschen - Shaw Keller LLP (nhoeschen@shawkeller.com)

<nhoeschen@shawkeller.com>

Subject: Re: ACS v. NV - Deposition Scheduling and Format

Hi Stephen,

Are you proposing that the parties submit a joint letter for a teleconference to Judge Burke? If so, please send a proposed letter for our consideration.

Best regards,

Peter

Peter Nelson Associate DLA Piper LLP (US) 301-346-1357

peter.nelson@us.dlapiper.com

From: Stephen Larson < <u>Stephen.Larson@knobbe.com</u>>

Sent: Tuesday, August 16, 2022 7:02 PM

To: Nelson, Peter < Peter < Peter.Nelson@us.dlapiper.com>; Williamson, Carrie

<<u>Carrie.Williamson@us.dlapiper.com</u>>; Cheryl Burgess <<u>Cheryl.Burgess@knobbe.com</u>>

Cc: NVIDIA-ACS-DLA < <u>NVIDIA-ACS-DLA@us.dlapiper.com</u>>; Karen Elizabeth Keller

<<u>kkeller@shawkeller.com</u>>; ACSService <<u>ACSService@knobbe.com</u>>; Nathan R.

Hoeschen - Shaw Keller LLP (nhoeschen@shawkeller.com)

<nhoeschen@shawkeller.com>

Subject: RE: ACS v. NV - Deposition Scheduling and Format

A EXTERNAL MESSAGE

Peter,

I write to follow up on the email below. NVIDIA's proposal does not significantly narrow the disputes or resolve Knobbe Martens' objections, including that NVIDIA fails to identify the relevant topics with reasonable particularity. While we remain available to discuss further, it appears the parties are at an impasse. Accordingly, Knobbe Martens will file a motion to quash and for a protective order. To streamline and expedite the resolution of this dispute, please let us know if NVIDIA will agree to Judge Burke deciding Knobbe Martens' motion under his procedures governing discovery disputes.

Best, Steve

From: Stephen Larson

Sent: Saturday, August 13, 2022 11:24 AM

To: Nelson, Peter < Peter < Peter.Nelson@us.dlapiper.com>; Williamson, Carrie

<<u>Carrie.Williamson@us.dlapiper.com</u>>; Cheryl Burgess <<u>Cheryl.Burgess@knobbe.com</u>>

Cc: NVIDIA-ACS-DLA < <u>NVIDIA-ACS-DLA@us.dlapiper.com</u>>; Karen Elizabeth Keller < <u>kkeller@shawkeller.com</u>>; ACSService < <u>ACSService@knobbe.com</u>>; Nathan R.

Hoeschen - Shaw Keller LLP (nhoeschen@shawkeller.com)

<nhoeschen@shawkeller.com>

Subject: RE: ACS v. NV - Deposition Scheduling and Format

Peter,

Thank you for your email. NVIDIA's counterproposal does not significantly narrow the disputes or remotely address the objections and concerns we have explained in detail. We will consider whether we can make any additional proposals to narrow the disputes and provide our position early next week. Given the ongoing disputes regarding 30(b) (6) issues, the Cannon and Smemoe depositions cannot go forward next week. We will reschedule the depositions to mutually agreeable dates after the 30(b)(6) issues are resolved.

Best, Steve

From: Nelson, Peter < Peter < Peter.Nelson@us.dlapiper.com>

Sent: Friday, August 12, 2022 7:13 PM

To: Stephen Larson < Stephen.Larson@knobbe.com>; Williamson, Carrie

<<u>Carrie.Williamson@us.dlapiper.com</u>>; Cheryl Burgess <<u>Cheryl.Burgess@knobbe.com</u>>

Cc: NVIDIA-ACS-DLA < <u>NVIDIA-ACS-DLA@us.dlapiper.com</u>>; Karen Elizabeth Keller < <u>kkeller@shawkeller.com</u>>; ACSService < <u>ACSService@knobbe.com</u>>; Nathan R.

Hoeschen - Shaw Keller LLP (nhoeschen@shawkeller.com)

<nhoeschen@shawkeller.com>

Subject: Re: ACS v. NV - Deposition Scheduling and Format

Stephen,

Thank you for your message. As explained below, NVIDIA was and still is open to compromise.

NVIDIA explained on Wednesday's meet and confer that NVIDIA could agree to limit the scope of the subpoena if ACS and Knobbe stipulated that ACS would not call any or rely on the statements of any Knobbe attorney in support of its case. NVIDIA expressly stated that it was not seeking to somehow prevent ACS or Knobbe from calling a Knobbe attorney as a witness should the conduct of a Knobbe attorney become at issue in the case. This important detail is missing from your email. As we further explained, if ACS intended to call Knobbe at trial, then we needed to be able to explore any topics that may be subject of testimony. ACS and Knobbe have not been willing to represent that Knobbe will not be testifying.

In response to your proposal, NVIDIA makes the following counterproposal:

Topics 1, 2, 4, 7, 8, 10. NVIDIA explained on the call that it seeks information on at least the family of the Asserted Patent—not just the Asserted Patent. The Asserted Patent family consists of U.S. Patent Nos. 10,333,768, 8,676,877, 8,140,612, and 8,082,289, as well as U.S. Provisional Patent Application Nos. 60/813,738, 60/850,908, and 60/757,573. ACS asserts that the Asserted Patent—through the '877, '612, and '289 patents—is entitled to claim priority to at least the '908 provisional, and the '573 provisional is one of the documents that ACS has identified as allegedly supporting its claimed conception date. In other words, NVIDIA is willing to narrow Topics 1, 2, 4, 7, 8, 10 to just the Asserted Patent and its U.S. family members—but nothing less.

Topic 3. As we explained on the meet and confer, there are sworn statements made by one of the named inventors that the alleged invention behind the Asserted Patent is an improvement to MGT. The MGT patent family consists of U.S. Patent Nos. 8,849,889 and 8,402,080; U.S. Patent Application No. 11/527,319; and U.S. Provisional Patent Application No. 60/720,442. For this reason, NVIDIA cannot agree to entirely drop Topic 3.

Topic 5 and 6. NVIDIA is willing to narrow this request if and only if ACS and Knobbe represent that no attorney from Knobbe will testify at trial (or through any other means) regarding anything responsive to these topics and no fact or expert witness will rely on or testify about anything a Knobbe attorney said that is responsive to these topics.

Topic 9, 11, 12, and 13. NVIDIA expressly stated on Wednesday's meet and confer that it is not seeking to prevent ACS or Knobbe from defending themselves from any future claim(s) that NVIDIA may or may not raise. However, ACS and Knobbe's refusal to stipulate that a Knobbe attorney will not be called or relied upon to affirmatively support Knobbe's case is a legitimate concern. NVIDIA is willing to drop Topics 11, 12, and 13 if ACS and Knobbe represent that no attorney from Knobbe will testify regarding anything responsive to these topics and no fact or expert witness will rely on or testify about anything a Knobbe attorney said that is responsive to these topics. NVIDIA reserves the right to ask the prosecuting attorneys questions responsive to Topics 9, 11, and 12.

Best regards, Peter

Peter Nelson

Associate

T +1 202 799 4092 M +1 301 346 1357 peter.nelson@us.dlapiper.com

DLA Piper LLP (US) dlapiper.com

From: Stephen Larson <<u>Stephen.Larson@knobbe.com</u>>

Sent: Friday, August 12, 2022 3:24 PM

To: Williamson, Carrie < <u>Carrie.Williamson@us.dlapiper.com</u>>; Cheryl Burgess

<<u>Cheryl.Burgess@knobbe.com</u>>

Cc: NVIDIA-ACS-DLA < NVIDIA-ACS-DLA@us.dlapiper.com >; Karen Elizabeth Keller

kkeller@shawkeller.com; ACSService@knobbe.com; Nathan R. Hoeschen - Shaw

Keller LLP (nhoeschen@shawkeller.com>

Subject: RE: ACS v. NV - Deposition Scheduling and Format



As noted below, we provided deposition dates for Mr. Cannon and Mr. Smemoe that were contingent on the parties resolving any outstanding Knobbe 30(b)(6) issues. Please let us know today if NVIDIA agrees to our proposal. If not, we will need to reschedule those depositions to mutually agreeable dates after the 30(b)(6) issues are resolved.

Best, Steve

From: Stephen Larson

Sent: Wednesday, August 10, 2022 7:24 PM

To: Williamson, Carrie < <u>Carrie.Williamson@us.dlapiper.com</u>>; Cheryl Burgess

<<u>Cheryl.Burgess@knobbe.com</u>>

Cc: NVIDIA-ACS-DLA < NVIDIA-ACS-DLA@us.dlapiper.com >; Karen Elizabeth Keller

< kkeller@shawkeller.com>; ACSService < ACSService@knobbe.com>; Nathan R. Hoeschen - Shaw

Keller LLP (nhoeschen@shawkeller.com>

Subject: RE: ACS v. NV - Deposition Scheduling and Format

Carrie,

Thank you for your email and for meeting and conferring this morning. Unfortunately, NVIDIA has not changed its position since the last meet and confer. NVIDIA has proposed no narrowing and instead suggested it *might* consider some narrowing if Knobbe and ACS stipulate in advance to not provide certain testimony at trial. As I explained in my previous email, and at the meet and confer today, we cannot make such a commitment because, among other things, we do not know what NVIDIA will be arguing at trial.

For example, as I explained during the call, NVIDIA has acknowledged it is pursuing an inequitable conduct defense but *refuses* to explain that potential defense. We do not think the Court will appreciate such tactics. Below, NVIDIA states that its goal is to avoid surprise, but it appears to us that NVIDIA's goal is the opposite. Specifically, NVIDIA seeks to surprise the Knobbe witnesses (including with an undisclosed inequitable conduct theory) by refusing to identify the specific subjects NVIDIA will pursue and instead forcing Knobbe to prepare witnesses on vast amounts of materials.

Despite NVIDIA's refusal to narrow or compromise, we have continued to examine NVIDIA's subpoena to determine whether we can agree to some of the topics, at least as narrowed. Below is a compromise to which we could agree if it would resolve all outstanding issues concerning NVIDIA's subpoena. Please let us know if NVIDIA agrees.

- 1. Subject to and without waiving its objections, Knobbe Martens would be willing to designate a witness on topics 1, 2 (narrowed to the Asserted Patent), 4, 7, 8 (narrowed to the Asserted Patent), and 10 (narrowed to the Asserted Patent) if the parties reach an overall agreement on the topics.
- 2. <u>Regarding Topics 12</u>: NVDIA already has the opportunity to probe the prosecuting attorneys' technical knowledge at their individual depositions (though Knobbe fails to see the relevance

- of that topic and reserves all rights to object to such questioning at the deposition). NVIDIA has identified no basis to require Knobbe Martens to prepare and designate one or more attorneys to testify regarding the technical knowledge of <u>all</u> its attorneys.
- 3. Regarding Topics 5 & 6: NVIDIA already has the opportunity to ask the prosecuting attorneys about facts relating to inventorship, conception, and reduction to practice within their personal knowledge (though, again, Knobbe reserves the right to object to such questioning at the deposition). Knobbe objects to NVIDIA's attempt to seek opinions and testimony from Knobbe Martens regarding legal issues or potential issues in the case.
- 4. Regarding Topic 11 & 13: Knobbe and ACS are not presently intending to testify at trial regarding statements between them. That should resolve Topics 11 and 13. NVIDIA's demand that Knobbe and ACS agree in advance to exclude testimony regardless of the circumstances or issues at that time—such as new defenses (e.g., inequitable conduct)—is not reasonable or workable.

Please let us know if NVIDIA agrees to the above proposal.

Best, Steve

From: Williamson, Carrie < <u>Carrie.Williamson@us.dlapiper.com</u>>

Sent: Tuesday, August 9, 2022 10:50 PM

To: Stephen Larson < Stephen.Larson@knobbe.com >; Cheryl Burgess

<<u>Cheryl.Burgess@knobbe.com</u>>

Cc: NVIDIA-ACS-DLA < NVIDIA-ACS-DLA@us.dlapiper.com >; Karen Elizabeth Keller < kkeller@shawkeller.com >; ACSService < ACSService@knobbe.com >; Nathan R. Hoeschen - Shaw Keller LLP (nhoeschen@shawkeller.com) < nhoeschen@shawkeller.com >

Subject: RE: ACS v. NV - Deposition Scheduling and Format

Counsel,

As we repeatedly stated, the scope of the many of NVIDIA's topics are driven by positions that ACS has taken in the case. It is highly concerning that Knobbe, as counsel for ACS, is taking broad positions regarding patents *other than* the Asserted Patent in this litigation; yet, as demonstrated by your email below, Knobbe seeks to prevent NVIDIA from engaging in discovery regarding those broad positions regarding those other patents and seeks to limit NVIDIA's discovery to only the Asserted Patent. Knobbe's behavior is fundamentally prejudicial and unfair to NVIDIA. We remain willing to discuss limiting scope of topics with Knobbe to seek to avoid burdening the Court; however, we will not agree to limit discovery solely to the Asserted Patent, given ACS and Knobbe's positions in the litigation, is a non-starter.

NVIDIA repeatedly explained the potential for significant narrowing once Knobbe Martens and ACS stipulated that:

- (1) ACS would not call anyone from Knobbe Martens as a witness; and
- (2) no ACS fact or expert witness would rely upon any statement or information obtained from Knobbe Martens.

Without this stipulation, NVIDIA must assume ACS intends to rely upon or call Knobbe Martens at trial—and, thus, must depose Knobbe Martens to obtain the full scope of potential testimony at trial. Should ACS agree to stipulate to (1) and (2) above, we can discuss significant narrowing of the subpoena.

Knobbe Marten's request to narrow the topics to just the Asserted Patent is consistent with ACS' position taken in the litigation. As explained during the meet and confer, the Asserted Patent is part of a family and Knobbe Martens prosecuted the entire family. Furthermore, ACS has injected this family in the case as ACS is relying on patents in the family for priority and conception and reduction to practice. Thus, at a bare minimum, NVIDIA is entitled to ask questions about the prosecution of the entire family.

Furthermore, as also explained during the meet and confer, Dean Dauger, a named inventor on the Asserted Patent, submitted a declaration to the USPTO saying that he allegedly developed the technology behind the Asserted Patent after he "began to explore ways to improve MGT"—a product for which ACS filed patents with Knobbe Martens as prosecution counsel. Declaration of Dean Dauger, IPR2021-00020, Ex. 2030, at ¶¶ 22–23 (Feb. 9, 2021); see also U.S. Pat. Nos. 8,849,889, 8,402,080; U.S. Prov. Pat. App. No. 60/720,442. NVIDIA, thus, also seeks information related to the patents filed for MGT, which was the precursor to the alleged technology behind the Asserted Patent.

NVIDIA is pursuing discovery as to potential inventorship defenses. As ACS' counsel admitted on the call, it is aware that NVIDIA is and has been seeking information related to possible inventorship defenses. As stated during the meet and confer NVIDIA's requests to Knobbe are related to NVIDIA's investigation of a possible inventorship defenses.

One of the main goals of this subpoena is to prevent ACS from surprising NVIDIA—not the other way around—by calling or relying upon information from Knobbe Martens at trial.

Based on your current responses, we understand that Knobbe is refusing to make a witness available for deposition. If Knobbe is changing its position, please let us know. Otherwise, we will need to seek Court intervention.

Regards, Carrie

From: Stephen Larson < <u>Stephen.Larson@knobbe.com</u>>

Sent: Thursday, July 28, 2022 12:39 PM

To: Cheryl Burgess < Cheryl.Burgess@knobbe.com>; Williamson, Carrie

<Carrie.Williamson@us.dlapiper.com>

Cc: NVIDIA-ACS-DLA < <u>NVIDIA-ACS-DLA@us.dlapiper.com</u>>; Karen Elizabeth Keller

kkeller@shawkeller.com; ACSService@knobbe.com; Nathan R. Hoeschen - Shaw

Keller LLP (nhoeschen@shawkeller.com>

Subject: RE: ACS v. NV - Deposition Scheduling and Format



Counsel,

I write regarding the meet and confer concerning NVIDIA's subpoena to Knobbe Martens.

I had hoped the parties could meet and confer in good faith to narrow and resolve disputes. For example, I suggested Knobbe may be able to compromise and provide some testimony on NIVIDIA's topic nos. 1, 2 (if narrowed to the Asserted Patent), 7, and 10 (if limited to the Asserted Patent) if the parties could reach an overall agreement.

NVIDIA repeatedly refused to narrow its topics. At best, NVIDIA offered a vague proposal that, if (1) Knobbe and ACS agreed that neither would testify at trial regarding statements from Knobbe to ACS then (2) NVIDIA may drop topics 11 and 13. NVIDIA suggested that such a representation might also narrow other topics. But NVIDIA refused to identify those topics or otherwise commit to any such narrowing.

When asked to explain the relevance of its topics, NVIDIA repeatedly provided answers that were vague and failed to justify the broad scope of discovery NVIDIA seeks. During the call, it became clear that many of NVIDIA's topics are directed to defenses/theories that NVIDIA has not yet asserted, articulated and/or disclosed in the litigation.

For example, NVIDIA stated it is pursuing "inequitable conduct," but refused to articulate its allegations even at a high level. Knobbe Martens objects to NVIDIA's attempt to force Knobbe Martens and its attorneys to testify and provide broad and burdensome discovery regarding an inequitable conduct defense that is not in the case and as to which Knobbe Martens has no notice.

Indeed, it appears that NVIDIA's strategy is to force Knobbe Martens to prepare witnesses on exceedingly broad topics (such as the <u>date</u> when Knobbe Martens first learned of <u>every</u> prior art reference during the prosecution of every related patent), so NVIDIA can avoid disclosing its theories and surprise Knobbe Martens' witnesses at their depositions. That is improper.

NVIDIA also suggested it is exploring "inventorship" of the various patents and that NVIDIA is interested in "no prior art" statements by ACS. I repeatedly asked NVIDIA to explain its allegations so the parties could meet and confer to narrow the scope of the topics. NVIDIA repeatedly provided vague answers that failed to justify its broad topics.

I explained and maintained Knobbe Martens' objections to each topic. For example, I explained that (1) Topics 2, 3, 8, 9, 10 seek burdensome discovery regarding patents other than the Asserted Patent; (2) Topics 5 and 6 seek legal testimony on issues and contentions in this case (e.g., inventorship, conception and reduction to practice, and obviousness) and (2) Topics 11 and 12 demand that Knobbe explain its knowledge of technical concepts (such as cluster computing systems and FFTW). NVIDIA failed to articulate any valid justification for pursuing discovery regarding these or other topics from Knobbe Martens.

Despite NVIDIA's refusals to narrow or compromise, I said Knobbe Martens would examine the

topics again and determine whether we can agree to some of the topics if narrowed. I ask that NVIDIA do the same.

Thanks, Steve

Stephen Larson

Partner

949-721-5301 Direct

Knobbe Martens

From: Cheryl Burgess < Cheryl.Burgess@knobbe.com>

Sent: Tuesday, July 26, 2022 8:53 AM

To: Williamson, Carrie < Carrie. Williamson@us.dlapiper.com >

Cc: NVIDIA-ACS-DLA < NVIDIA-ACS-DLA@us.dlapiper.com >; Karen Elizabeth Keller

<<u>kkeller@shawkeller.com</u>>; ACSService@knobbe.com>; Nathan R. Hoeschen - Shaw

Keller LLP (nhoeschen@shawkeller.com; Stephen Larson

<<u>Stephen.Larson@knobbe.com</u>>

Subject: RE: ACS v. NV - Deposition Scheduling and Format

Carrie,

We objected to NVIDIA's 30(b)(6) subpoena and stated our willingness to meet and confer. If NVIDIA is still pursuing a 30(b)(6) deposition, please let us know when NVIDIA is available to meet and confer this week. To the extent Knobbe does provide 30(b)(6) testimony, we expect that Mr. Cannon and/or Mr. Smemoe will be the designated witnesses. Thus, our proposed dates are contingent on the parties, or if necessary the court, resolving any outstanding Knobbe 30(b)(6) issues by those dates.

Best, Cheryl

Cheryl Burgess

Partner

949-721-2935 Direct

Knobbe Martens

From: Williamson, Carrie < Carrie.Williamson@us.dlapiper.com>

Sent: Monday, July 25, 2022 9:53 PM

To: Cheryl Burgess < Cheryl.Burgess@knobbe.com>; ACSService < ACSService@knobbe.com>; Karen

Elizabeth Keller < kkeller@shawkeller.com >; Nathan R. Hoeschen - Shaw Keller LLP

(nhoeschen@shawkeller.com>

Cc: NVIDIA-ACS-DLA < <u>NVIDIA-ACS-DLA@us.dlapiper.com</u>> **Subject:** RE: ACS v. NV - Deposition Scheduling and Format

Cheryl,

The dates for Mr. Cannon and Mr. Smemoe work (August 16 and 18 respectively). Will one also be Knobbe's designated witness?

Please let us know when Mr. Bancroft and Dr. Singh will be available for deposition.

Thanks, Carrie

From: Cheryl.Burgess < <u>Cheryl.Burgess@knobbe.com</u>>

Sent: Tuesday, July 19, 2022 10:13 AM

To: Williamson, Carrie < Carrie < Carrie.Williamson@us.dlapiper.com>; ACSService

<a href="mailto:<a href="mailto:Keller@shawkeller.com

- Shaw Keller LLP (<u>nhoeschen@shawkeller.com</u>) <<u>nhoeschen@shawkeller.com</u>>

Cc: NVIDIA-ACS-DLA < <u>NVIDIA-ACS-DLA@us.dlapiper.com</u>> **Subject:** RE: ACS v. NV - Deposition Scheduling and Format

↑ EXTERNAL MESSAGE

Carrie.

We will have to get back to you regarding video conferencing for depositions.

We can confirm that Mr. Cannon is available on August 16 and Mr. Smemoe is available on August 18. We are still investigating dates for the remaining individuals and will follow-up once we have additional availability dates.

Best, Cheryl

Cheryl Burgess

Partner

949-721-2935 Direct

Knobbe Martens

From: Williamson, Carrie < Carrie < Carrie < Carrie.Williamson@us.dlapiper.com>

Sent: Monday, July 18, 2022 2:20 PM

To: ACSService < ACSService@knobbe.com >; Karen Elizabeth Keller < kkeller@shawkeller.com >; Nathan R. Hoeschen - Shaw Keller LLP (nhoeschen@shawkeller.com) < nhoeschen@shawkeller.com >

Cc: NVIDIA-ACS-DLA < NVIDIA-ACS-DLA@us.dlapiper.com > **Subject:** ACS v. NV - Deposition Scheduling and Format

Cheryl,

We are working on dates for the NVIDIA witnesses. Please confirm that your

understanding is that depositions in the case (whether it is of ACS, NVIDIA or third parties) will take place via video conferencing.

When will ACS be in a position to provide dates for Mr. Tannenbaum, Dr. Dauger, Ms. Tannenbaum, ACS' 30(b)(6) witnesses, Knobbe, Mr. Smemoe, Mr. Cannon, Dr. Singh, and Mr. Bancroft?

Thanks, Carrie

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From: O"Byrne, Stephanie

To: Cheryl Burgess; Williamson, Carrie
Cc: Lit ZTANNL.017L; NVIDIA-ACS-DLA

Subject: RE: ACS v. NVIDIA: deposition follow-up

Date: Friday, August 26, 2022 2:55:30 PM

Attachments: <u>image001.pnq</u>

Hi Cheryl,

We agree to table the issue as you propose below.

Best,

Stephanie

Stephanie E. O'Byrne

Of Counsel

T +1 302 468 5645 F +1 302 691 4745

stephanie.obyrne@us.dlapiper.com



From: Cheryl Burgess < Cheryl. Burgess@knobbe.com>

Sent: Friday, August 26, 2022 5:34 PM

To: Williamson, Carrie < Carrie. Williamson@us.dlapiper.com>

Cc: Lit ZTANNL.017L <LitZTANNL.017L@knobbe.com>; NVIDIA-ACS-DLA <nvidia-acs-

dla@dlapiper.com>

Subject: ACS v. NVIDIA: deposition follow-up

A EXTERNAL MESSAGE

Carrie,

As we noted at the conclusion of the deposition yesterday, could not speak to certain key aspects of NVIDIA's financial spreadsheets, which clearly fall within the scope of his designation as NVIDIA's 30(b)(6) witness on several relevant topics. As we discussed, we are willing to work with NVIDIA to find a way for NVIDIA to provide ACS with this information.

To avoid the unnecessary presentation of issues to the Court at this time, ACS proposes that the parties agree that ACS need not file a letter with the Court today to preserve its rights to pursue this discovery. We propose scheduling a meet and confer for early next week to discuss a resolution. If the parties are at an impasse at that time, the parties will then proceed with a joint letter to the Court. Please confirm that NVIDIA agrees with this approach and will not assert that this discovery

dispute is waived or otherwise untimely if brought to the court within a reasonable time after the parties' meet and confer.

Best, Cheryl

Cheryl Burgess

Partner
Cheryl.Burgess@knobbe.com
949-721-2935 Direct

Knobbe Martens

2040 Main St., 14th Fl. Irvine, CA 92614 www.knobbe.com/cheryl-burgess

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From: O"Byrne, Stephanie

To: Cheryl Burgess; ACSService

Cc: NVIDIA-ACS-DLA; Karen Elizabeth Keller ; Nathan R. Hoeschen; Emily DiBenedetto; O"Byrne, Stephanie

Subject: RE: NVIDIA discovery letter 8.26.22

Date: Friday, August 26, 2022 2:43:40 PM

Attachments: <u>image004.png</u>

image001.png

Hi Cheryl,

Thanks for your email. The financials dispute, upon which the parties declared an impasse, is broader than the tax return request. While we appreciate that ACS will investigate whether it will produce tax returns, this does not resolve the overarching questions regarding ACS' production of other financial documents,

Thus we will submit this disputed issue as written ("motion to compel ACS to produce financial documents"). Of course, should ACS change its position and/or the parties otherwise resolve the issue prior to briefing, we can table it.

Best,

Stephanie

Stephanie E. O'Byrne

Of Counsel

T +1 302 468 5645 F +1 302 691 4745

stephanie.obyrne@us.dlapiper.com



From: Cheryl Burgess < Cheryl. Burgess@knobbe.com>

Sent: Friday, August 26, 2022 5:24 PM

To: O'Byrne, Stephanie <Stephanie.OByrne@us.dlapiper.com>; ACSService

<ACSService@knobbe.com>

Cc: NVIDIA-ACS-DLA <NVIDIA-ACS-DLA@us.dlapiper.com>; Karen Elizabeth Keller <kkeller@shawkeller.com>; Nathan R. Hoeschen <nhoeschen@shawkeller.com>; Emily DiBenedetto <emily.dibenedetto@shawkeller.com>; Stamper, Julian <Julian.Stamper@us.dlapiper.com>

Subject: RE: NVIDIA discovery letter 8.26.22



Stephanie,

We received your proposed letter to the Court. As noted during the call today, this is the first time ACS has understood NVIDIA to be requesting ACS's tax returns and that NVIDIA interprets such tax

returns as falling within its requests for financial records. We are investigating this issue with our client. To avoid the unnecessary presentation of issues to the Court, ACS proposes that the parties approach the second issue identified in the letter in the same manner we proposed approaching the issues identified in ACS's proposed letter to the Court, as described in my recent email to Clayton and Peter.

Specifically, in light of ACS's commitment to investigate the production of ACS's tax returns, which are the subject of the second issue identified in your proposed letter to the Court, ACS proposes following up on this issue during the meet and confer next Friday. If the parties are at an impasse at that time, the parties will then proceed with a joint letter to the Court on financial documents (i.e., ACS's tax returns).

If NVIDIA agrees with this approach, ACS agrees not to assert that this discovery dispute is waived or otherwise untimely if brought to the court within a reasonable time after the parties' pending meet and confer.

Best, Cheryl

Cheryl Burgess

Partner

949-721-2935 Direct

Knobbe Martens

From: O'Byrne, Stephanie < Stephanie. OByrne@us.dlapiper.com >

Sent: Friday, August 26, 2022 12:50 PM **To:** ACSService <<u>ACSService@knobbe.com</u>>

Cc: NVIDIA-ACS-DLA < NVIDIA-ACS-DLA@us.dlapiper.com >; Karen Elizabeth Keller

<<u>kkeller@shawkeller.com</u>>; Nathan R. Hoeschen <<u>nhoeschen@shawkeller.com</u>>; Emily DiBenedetto <<u>emily.dibenedetto@shawkeller.com</u>>; Stamper, Julian <<u>Julian.Stamper@us.dlapiper.com</u>>

Subject: NVIDIA discovery letter 8.26.22

Counsel,

Attached is the discovery letter requesting a conference on the two NVIDIA issues certified today. I plan to get on file close to 6 EST.

I will revert separately on the other letter, looping in Steve.

Regards, Stephanie

Stephanie E. O'Byrne

Of Counsel

F +1 302 691 4745 stephanie.obyrne@us.dlapiper.com



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From: Ben Shiroma

To: Williamson, Carrie; NVIDIA-ACS-DLA
Cc: ACSService; Cheryl Burgess; Karen Keller

Subject: RE: ACS v. NVIDIA

Date: Saturday, September 3, 2022 12:03:25 AM

Attachments: 2022-09-02 ACS privilege log RE 2022-08-23 clawed back documents.pdf

2022-09-02 ACS redaction privilege log RE 2022-08-23 clawed back documents.pdf

Carrie,

ACS continues to disagree with NVIDIA's attempt to impose unilateral, unreasonable deadlines without sufficient notice or discussion. NVIDIA waited until August 30 to propose a 2-day deadline for ACS's privilege log of clawed-back documents. ACS provided its counter proposal on August 31, and NVIDIA then waited until today to propose a revised same-day deadline for certain clawed-back documents. Your comparison to Ms. Burgess's March 29, 2022 email is inapt. Ms. Burgess proposed a 10-day turn around for NVIDIA's privilege log for withheld documents 3-days in advance of NVIDIA's production, ultimately giving NVIDIA at least 13 days' notice to complete its privilege log. This is in stark contrast to NVIDIA's 2-day and same-day demands. Nonetheless, ACS has labored to complete its privilege logs of the documents clawed back on August 23, 2022 within NVIDIA's unilateral deadline despite several other contemporaneous deadlines and depositions in this case. ACS will produce privilege logs for the documents clawed back on August 25, 2022 on Monday, September 5, 2022, despite it being a holiday. Please confirm that NVIDIA has complied with the Protective Order with respect to the documents clawed back in ACS's 2 August 25, 2022 letters.

ACS is not proposing that the parties exchange the larger privilege logs covering emails and other documents on September 9, 2022. ACS is diligently working on these logs and will be better able to estimate when such an exchange can take place on September 9, 2022.

Best, Ben

Ben Shiroma

Associate

Ben.Shiroma@knobbe.com

310-601-1269 Direct

Knobbe Martens

1925 Century Park East, Suite 600 Los Angeles, CA 90067

https://www.knobbe.com/attorneys/ben-k-shiroma

From: Williamson, Carrie < Carrie. Williamson@us.dlapiper.com>

Sent: Friday, September 2, 2022 9:59 AM

To: Ben Shiroma <Ben.Shiroma@knobbe.com>; NVIDIA-ACS-DLA <NVIDIA-ACS-

DLA@us.dlapiper.com>

Cc: ACSService <ACSService@knobbe.com>; Cheryl Burgess <Cheryl.Burgess@knobbe.com>; Karen

Keller < kkeller@shawkeller.com>

Subject: RE: ACS v. NVIDIA

Ben,

Given that the clawed-back documents are subject to motion practice and ACS has still not provided a privilege log, ACS' delay in providing the basis for its privileged documents is prejudicial to NVIDIA's preparation of its letter brief to the court. Furthermore, ACS previously demanded that NVIDIA provide a privilege log for clawed back documents within 10 days. See 3/29/2022 Burgess email. We understand that ACS will be providing its privilege log for the documents it clawed back on August 23 today. We further understand ACS will be providing its privilege log for the documents clawed back on August 25 by no later than September 5.

With respect to the remainder of the privilege log, we understand you are proposing to exchange the rest of the updated privilege logs by September 9. Is that correct?

Regards, Carrie

From: Ben Shiroma < Ben.Shiroma@knobbe.com > Sent: Wednesday, August 31, 2022 11:40 AM

To: Williamson, Carrie < <u>Carrie.Williamson@us.dlapiper.com</u>>; NVIDIA-ACS-DLA < <u>NVIDIA-ACS-DLA@us.dlapiper.com</u>>

Cc: ACSService < ACSService@knobbe.com >; Cheryl Burgess < Cheryl.Burgess@knobbe.com >; Karen

Keller < kkeller@shawkeller.com >

A EXTERNAL MESSAGE

Subject: RE: ACS v. NVIDIA

Carrie.

Thank you for confirming NVIDIA's compliance with the Protective Order with respect to the clawed back privileged documents identified in ACS's August 23, 2022 letter.

The parties have not yet agreed on a specific date for a mutual exchange of supplemental privilege logs for email and other documents, which your email acknowledges. ACS has diligently been working to complete this log, and had intended to include the clawed back privileged documents along with the privileged email documents. ACS continues to diligently work on this log and will be better able to estimate when this exchange can take place on September 9, 2022.

We understand that NVIDIA is now unilaterally seeking an expedited privilege log for just the clawed back privileged documents by tomorrow. Although ACS is willing to work with NVIDIA to expedite the production of a separate privilege log for the clawed back privileged documents, ACS will not be able to provide the log by NVIDIA's unilateral deadline of tomorrow. ACS can agree to produce a separate privilege log covering the clawed back privileged documents by September 5, 2022 despite it being a holiday.

Best, Ben

Ben Shiroma

Associate

Ben.Shiroma@knobbe.com

310-601-1269 Direct

Knobbe Martens

1925 Century Park East, Suite 600 Los Angeles, CA 90067 https://www.knobbe.com/attorneys/ben-k-shiroma

From: Williamson, Carrie < <u>Carrie.Williamson@us.dlapiper.com</u>>

Sent: Tuesday, August 30, 2022 6:07 PM

To: Ben Shiroma <<u>Ben.Shiroma@knobbe.com</u>>; NVIDIA-ACS-DLA <<u>NVIDIA-ACS-</u>

DLA@us.dlapiper.com>

Cc: ACSService <<u>ACSService@knobbe.com</u>>; Cheryl Burgess <<u>Cheryl.Burgess@knobbe.com</u>>; Karen

Keller < kkeller@shawkeller.com >

Subject: RE: ACS v. NVIDIA

Counsel,

In response to your August 23, 2022 letter clawing back privileged documents, we confirm we have taken reasonable steps to permanently delete all electronic copies of such documents from electronic records and to destroy all paper copies.

We have not yet received a privilege log for any documents clawed back by ACS. Please provide a privilege log for all documents clawed back by ACS based on privilege by end of day Thursday, September 1, as NVIDIA must submit its letter to the Court regarding the dispute on privileged documents on Tuesday, September 6. Additionally, please let us know when ACS will be prepared to exchange full privilege logs.

Regards, Carrie

From: Ben Shiroma < Ben.Shiroma@knobbe.com >

Sent: Tuesday, August 23, 2022 10:54 AM

To: Williamson, Carrie < Carrie < Carrie < Carrie.Williamson@us.dlapiper.com>; NVIDIA-ACS-DLA < NVIDIA-ACS-DLA <a hre

DLA@us.dlapiper.com>

Cc: ACSService <<u>ACSService@knobbe.com</u>>; Cheryl Burgess <<u>Cheryl.Burgess@knobbe.com</u>>; Karen

Keller < kkeller@shawkeller.com >

Subject: ACS v. NVIDIA

A EXTERNAL MESSAGE

Carrie,

Please see the attached correspondence from Cheryl Burgess.

Best,

Ben

Ben Shiroma

Associate

Ben.Shiroma@knobbe.com

310-601-1269 Direct

Knobbe Martens

1925 Century Park East, Suite 600 Los Angeles, CA 90067 https://www.knobbe.com/attorneys/ben-k-shiroma

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From: Williamson, Carrie

To: ACSService; kkeller@shawkeller.com; Nate Hoeschen

Cc: <u>NVIDIA-ACS-DLA</u>

Subject: ACS v. NVIDIA - ACS"s clawed back documents

Date: Monday, September 5, 2022 9:57:05 PM

Counsel.

In response to your August 25, 2022 letters clawing back privileged documents, we confirm we have taken reasonable steps to permanently delete all electronic copies of such documents from electronic records and to destroy all paper copies.

Given that the clawed-back documents are subject to motion practice and ACS has still not provided a privilege log for the August 25 clawed back documents, ACS' delay in providing the basis for its privileged documents is prejudicial to NVIDIA's preparation of its letter brief to the court and NVIDIA will so note in its letter to the court tomorrow.

Regards, Carrie

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NVIDIA CORPORATION, Petitioners,

V.

ADVANCED CLUSTER SYSTEMS, INC. Patent Owner

Case No. IPR2020-01608 U.S. Patent 8,082,289 Case No. IPR2021-00019 U.S. Patent 10,333,768 Case No. IPR2021-00020 U.S. Patent 10,333,768 Case No. IPR2021-00075 U.S. Patent 8,140,612 Case No. IPR2021-00108 U.S. Patent 8,676,877

DECLARATION OF JOHN BANCROFT



NVIDIA Corp. v. Advanced Cluster Systems IPR2021-00019 Advanced Cluster Systems Ex. 2008 IPR2020-01608, IPR2021-00019, -00020, -00075, -00108 NVIDIA v. Advanced Cluster Systems

- I, John Bancroft, hereby declare as follows:
- 1. I am currently the Chief Executive Officer at the Queensland Cyber Infrastructure Foundation. I have personal knowledge of the matters set forth herein, and, if I am called upon to testify, I could and would testify competently hereto.
- 2. I have been asked by Advanced Cluster Systems ("ACS") to provide the following information regarding cluster-computing, or supercomputing, generally as well as the long-felt but unmet need for the solution provided by ACS's Supercomputing Engine Technology ("SET") product, the failure of others to meet that need, and scepticism of SET in the industry.

BACKGROUND

- 3. I have over fourteen years of experience with cluster-computing.
- 4. Beginning in 2007 and continuing through 2013, I worked for the Science and Technology Facilities Council ("STFC"). The STFC is part of the United Kingdom Research and Innovation ("UKRI") and had a broad science portfolio, and works with the academic and industrial communities to share its expertise. One of the STFC's main U.K. sites is Daresbury Laboratory.
- 5. From March 2007 to February 2009, I was the Head of Business Development for the Computational Science & Engineering Department ("CSED") at Daresbury Laboratory. CSED was the U.K.'s leading provider of expertise and facilities in supercomputing and high-performance computing. I was responsible for

IPR2020-01608, IPR2021-00019, -00020, -00075, -00108 NVIDIA v. Advanced Cluster Systems

effort needed to implement such traditional parallel-computing architectures. SET and SEM were the first products I encountered that could actually deliver on the capability.

31. Thus, my personal observations and knowledge of the industry leads me to the conclusion that many others tried but failed to address the problems faced by the industry.

INITIAL SCEPTICISM OF SET

- 32. Upon learning of SET, I introduced the product to many experienced parallel programmers that wrote parallel code for research purposes and for commercial software vendors. As I noted above, programming for the traditional parallel-computing architectures at the time was difficult and required substantial expertise. These experts in parallel programming were highly sceptical of SET and could not believe it could work. Their whole academic standing and/or livelihood hinged on their high level of expertise in writing parallel codes, as well as the perceived scarcity of this ability. They were initially sceptical of a cluster-computing architecture that would enable a regular software programmer to write efficient, accurate parallel programs.
- 33. Although I left Daresbury Laboratory in 2013, I still have occasional contact with ACS. In appreciation for my efforts to introduce SET to industry, ACS offered me a seat on its Business Advisory Board sometime in 2008 or 2009.

IPR2020-01608, IPR2021-00019, -00020, -00075, -00108

NVIDIA v. Advanced Cluster Systems

accepted, and still serve on the Board. In recognition of my service, ACS issued me

an option to buy a small number of shares in ACS.

I hereby declare that all statements made herein of my own knowledge are

true and that all statements made on information and belief are believed to be true;

and further that these statements were made with the knowledge that wilful false

statements and the like so made are punishable by fine or imprisonment, or both,

under Section 1001 of Title 18 of the United States Code and that such wilful false

statements may jeopardise the validity of the application or any patent issued

thereon. I declare under penalty of perjury under the laws of the United States of

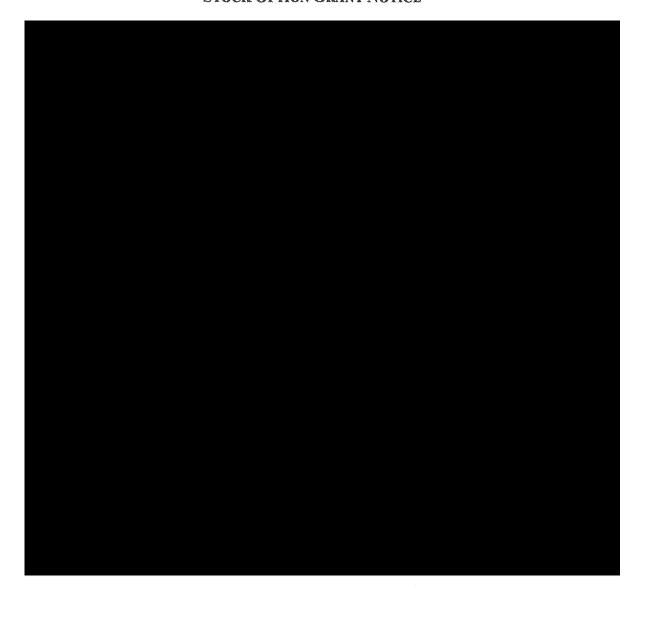
America that the foregoing is true and correct.

Date: 9th Follmary 2021

John Bancroft

ADVANCED CLUSTER SYSTEMS, INC.

2011 EQUITY INCENTIVE PLAN STOCK OPTION GRANT NOTICE



ADVANCED C	luster Systems,	INC. / Y
D. 21/1	TRIVE VAG.	

OPTIONHOLDER:

John BANKER

Signature

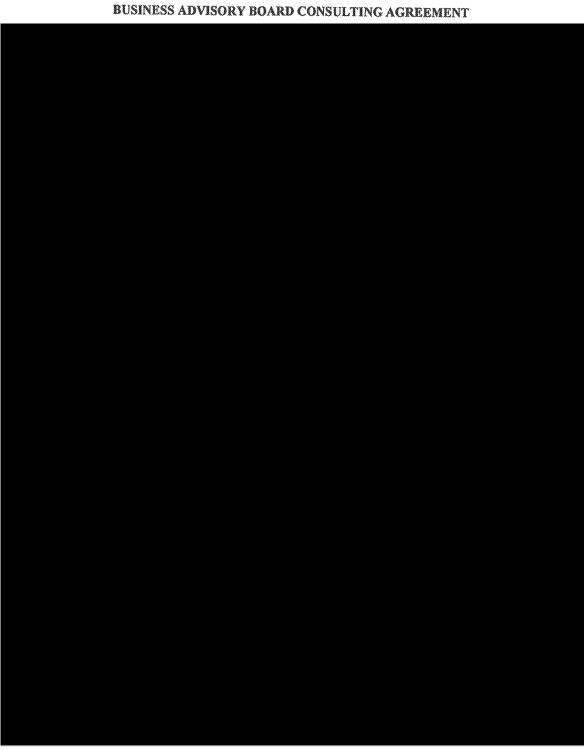
Date: 1//20/14

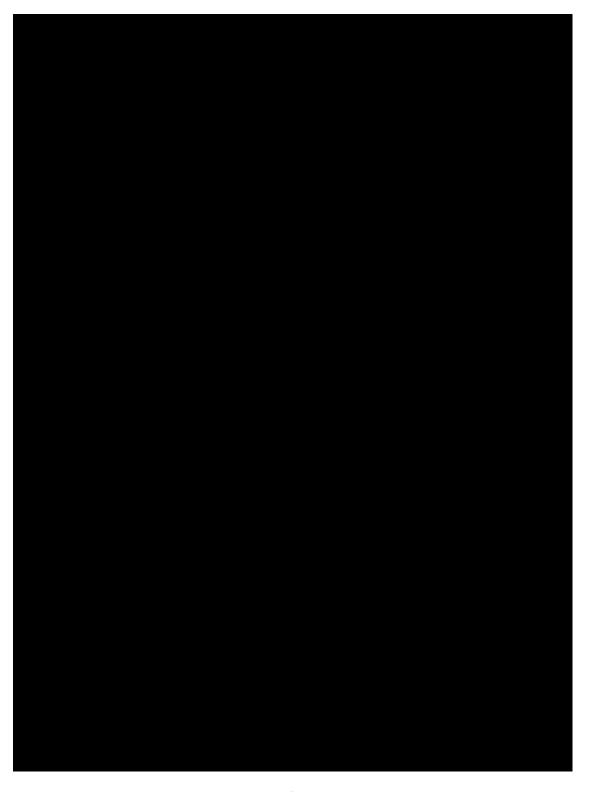
Signature

Date: 21 NOVEMBER 2014

ATTACHMENTS: Stock Option Agreement, 2011 Equity Incentive Plan and Notice of Exercise

ADVANCED CLUSTER SYSTEMS, INC.





ADVANCED CLUSPER SYSTEMS, INC.	CONSULTANT
By: Zvi Tannenbaum Title: President	Print Name: John Bancroft
Address: 65 Enterprise Aliso Viejo, CA 92656	
Phone:Fax:	
Email:	



CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Transcript of John Bancroft

Date: September 2, 2022

Case: Advanced Cluster Systems, Inc. -v- NVIDIA Corporation, et al.

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Transcript of John Bancroft September 2, 2022

1 (1 to 4)

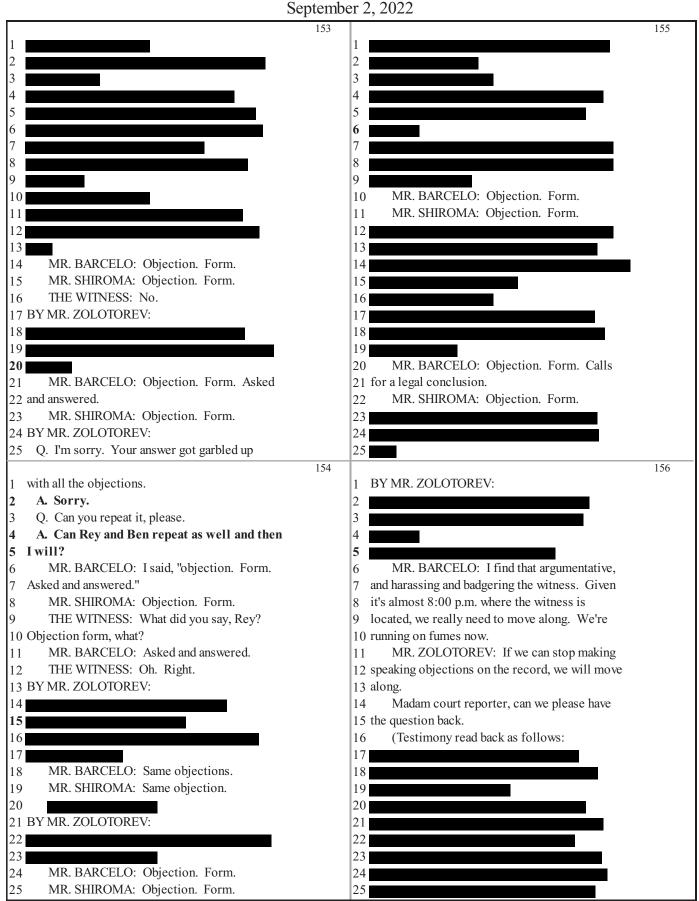
IN THE UNITED STATES DISTRICT COURT APPEARANCES FOR THE DISTRICT OF DELAWARE ON BEHALF OF THE PLAINTIFF ADVANCED CLUSTER SYSTEMS, INC. ADVANCED CLUSTER BY: Ben Shiroma, ESOUIRE KNOBBE, MARTENS, OLSON & BEAR, LLP SYSTEMS, INC., Plaintiff, 2040 Main Street, 14th Floor : Civil Action No. Irvine, California 92614 NVIDIA CORPORATION, : 19-02032-CFC-CJB 949-760-0404 NVIDIA SINGAPORE PTE. LTD., AND NVIDIA 12 INTERNATIONAL, INC., Defendants. ON BEHALF OF THE DEFENDANTS NVIDIA 14 CORPORATION, NVIDIA SINGAPORE PTE. LTD., AND 15 CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER 15 NVIDIA INTERNATIONAL, INC.: BY: Yakov Zolotorev, ESQUIRE 17 17 Remote Videotaped Deposition of Peter F. Nelson, ESQUIRE JOHN BANCROFT DLA PIPER LLP (US) 19 Friday, September 2, 2022 2000 University Avenue 20 7:09 a.m. PST 20 East Palo Alto, California 94303 21 21 650-833-2000 22 Job No.: 462140 22 23 Reported By: DEBRA BOLLMAN FARFAN, RDR-CRR-CRC 25 CA CSR No. 11648 APPEARANCES CONTINUED Videoconference Deposition of JOHN BANCROFT, held remotely: ON BEHALF OF THE WITNESS: Witness Location: BY: Revnaldo Barcelo, ESOUIRE U.K. Cheshire, West England BARCELÓ, HARRISON & WALKER, LLP 2901 West Coast Hwy Suite 200 Newport Beach, CA 92663 Pursuant to subpoena, before Debra Bollman 12 Farfan, Registered Diplomate Reporter, 12 13 Registered Merit Reporter, Certified Realtime 13 ALSO PRESENT: 14 Reporter, Certified Realtime Captioner, and Manita Joseph, Planet Depos VideoTech 15 Certified Shorthand Reporter No. 11648, in and Harold Rodriguez, Training Videographer 16 for the State of California. Enrique Casas, Planet Depos Videographer 17 17 18 19 20 22 24 25

Transcript of John Bancroft September 2, 2022

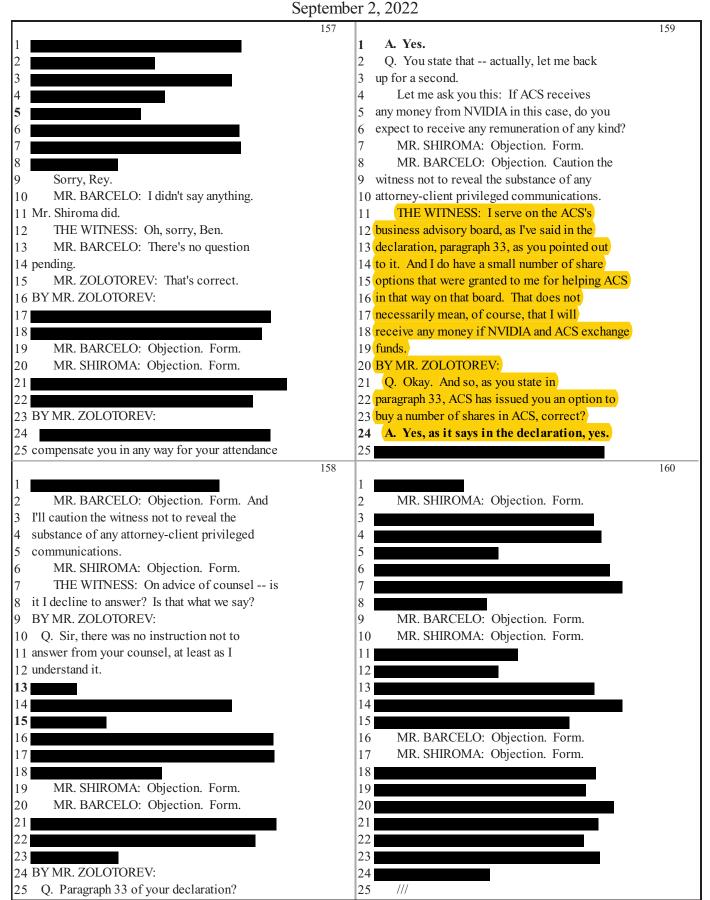
2 (5 to 8)

September 2, 2022				
		5	7	
1			1 is appearing here voluntarily.	
2	INDEX		2 And the reason he's here is because	
3	DEPONENT	PAGE	3 NVIDIA has threatened to seek to preclude him	
4	JOHN BANCROFT		4 from testifying at trial unless he does testify	
5	EXAMINATION BY MR. ZOLOTOREV	8	5 in this deposition, which is why he's here.	
6	EXAMINATION BY MR. SHIROMA	179	6 He's been identified in supplemental	
7			7 initial disclosures, as far as we know, on	
8			8 specific topics of knowledge; and we expect	
9	INDEX OF EXHIBITS		9 this deposition to be limited to that topic and	
10	(EXHIBITS ARE ATTACHED TO THE TRANSCRIPT.)	1	10 any appropriate related areas.	
11	DESCRIPTION	PAGE	11 MR. SHIROMA: Ben Shiroma of Knobbe	
12	EXHIBIT 1 SUBPOENA	15		
13	EXHIBIT 2 DECLARATION OF JOHN BANCROFT	53	12 Martens, representing Plaintiff, Advanced	
14	EXHIBIT 3 "STAR-P USER GUIDE"	114	13 Cluster Systems, Inc.	
15	EXHIBIT 4 "POOCHMPI TOOLKIT FOR MATHEMATICA	126	14 THE VIDEOGRAPHER: The court reporter	
16	ACS AND DAUGER RESEARCH		15 today is Debra Bollman, representing Planet	
17	EXHIBIT 5 ACS_NVIDIA_040776 TO 777 EMAIL	162	16 Depos.	
18	EXCHANGE		Would the reporter please swear in the	
19			18 witness.	
20			19 STIPULATIONS	
21	PREVIOUSLY MARKED EXHIBITS		20 THE REPORTER: Will counsel please	
22	DESCRIPTION	PAGE	21 stipulate that in lieu of formally swearing in	
23	NONE		22 the witness, the reporter will instead ask the	
24	END OF EXHIBITS		23 witness to acknowledge that their testimony	
25			24 will be true under the penalties of perjury,	
			25 that counsel will not object to the	
		6	8	
1	PROCEEDINGS	O	1 admissibility of the transcript based on	
2	****		2 proceeding remotely, and that the witness has	
	THE VIDEOGRAPHER: Here begins	Diek	3 verified that he is, in fact, John Bancroft.	
	THE VIDEOGRAPHER: Here begins Disk Number 1 in the videotaped deposition of John			
4	* *	лш	_	
	5 Bancroft in the matter of Advanced Cluster		5 MR. ZOLOTOREV: So stipulated. MR. PARCELO: So stipulated by the	
6	6 Systems, Inc., versus NVIDIA Corporation,		6 MR. BARCELO: So stipulated by the	
1/	7 et al., in the United States District Court for		7 witness.	
	8 the District of Delaware; Case Number		8 MR. SHIROMA: Yes.	
9	19-02032-CFC-CJB.		9	
	Today's date is September 2nd, 2022.		10 Whereupon,	
	11 The time on the video monitor is 7:09 a.m.		11 JOHN BANCROFT	
12	12 Pacific Standard Time.		was called as a witness, was duly sworn	
	13 The videographer today is Enrique Casas,		13 and testified under penalty of perjury as	
14	14 representing Planet Depos. This video		14 follows:	
15	15 deposition is taking place remotely.		15 EXAMINATION	
	Would counsel please voice identify		16 BY MR. ZOLOTOREV:	
- 1	17 themselves and state whom they represent.		17 Q. Mr. Bancroft, can you please state your	
	18 MR. ZOLOTOREV: Yes. This is Jake		18 name and address for the record.	
	19 Zolotorev of DLA Piper, representing the		19 A. Do you want my full name?	
	20 defendants, NVIDIA, which are also the noticing		20 Q. Yes, sir.	
140			21 A. So my full name is John Lindley	
21			21 15 50 my full hame is some Enturey	
			22 Rangraft And my address is The Saddlery	
22	colleague, Peter Nelson, also of DLA Piper		22 Bancroft. And my address is The Saddlery,	
22 23	colleague, Peter Nelson, also of DLA Piper MR. BARCELO: Reynaldo Barcelo fro	m the	23 Tilstone Paddocks, Tilstone Fearnall,	
22 23 24	colleague, Peter Nelson, also of DLA Piper	m the on		

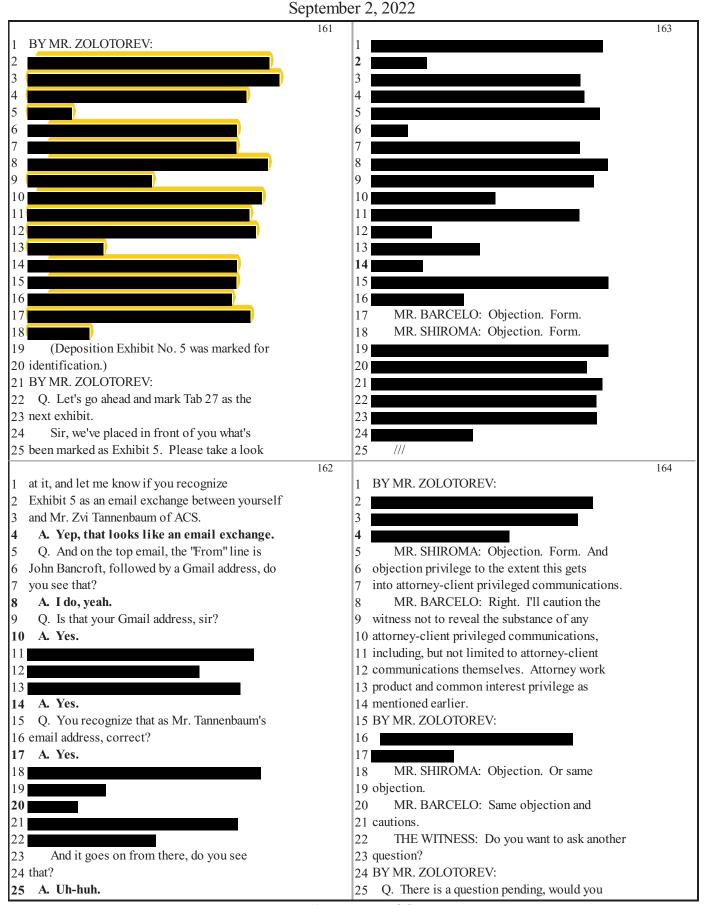
39 (153 to 156)



40 (157 to 160)



41 (161 to 164)



49 (193 to 196)

September 2, 2022 193 195 1 product to many experienced parallel 1 including because it's beyond the scope of the questions that I asked the witness. 2 programmers that wrote parallel code for 3 research purposes, and for commercial software And so, with all of that, with all those caveats, I have no further questions for the 4 vendors. As I noted above, programming for the witness at this time. 6 traditional parallel-computing architectures at MR. BARCELO: I have a couple of 6 7 the time, was difficult and required housekeeping items to note on the record first. 8 substantial expertise. These experts in Not necessarily because of the 8 9 parallel programming were highly skeptical of confidentiality relating to the parties to the 10 SET, and could not believe it could work. 10 litigation, but the witness's personal 11 Their whole -- excuse me -- their whole 11 confidential information that was testified 12 academic standing and/or livelihood hinged on 12 about in this deposition, I will mark this 13 their high level of expertise in writing 13 transcript as Confidential Under the Protective 14 parallel codes, as well as the perceived 14 Order pending further review for 15 scarcity of this ability. They were initially 15 confidentiality issues. 16 skeptical of a cluster-computing architecture And then just a final comment regarding 16 17 that would enable a regular software programmer 17 the objections that defendant's counsel just 18 to write efficient, accurate, parallel 18 mentioned. Again, this is a voluntary 19 appearance by Mr. Bancroft, not subject to any 19 programs. 20 Q. Is paragraph 32 accurate? 20 subpoena or any other compulsory type of 21 A. Yes. 21 appearance, and therefore, all his testimony is MR. ZOLOTOREV: Object to form. 22 being proffered in a voluntary manner, and that 23 BY MR. SHIROMA: 23 would include any statement that he may wish or 24 Q. Is there anything in paragraph 32 that 24 he did wish to make regarding his previous 25 you disagree with? 25 declaration. And it was all done in accordance 194 196 MR. ZOLOTOREV: Object to form. with the oath that he agreed to at the THE WITNESS: There isn't, no. beginning of the deposition. 2 3 MR. SHIROMA: And just briefly for the BY MR. SHIROMA: Q. And if we could turn to page 13 of the record, with respect to defense counsel's 5 document. statements on the record, ACS states its A. Okav. disagreement. Q. Mr. Bancroft, when you wrote this And with respect to defense counsel's 8 declaration, did you declare that all the standing objection to reading from the 9 statements you made are true? declaration on to the record, ACS disagrees at 10 A. To the best of my knowledge and memory, 10 least because Mr. Bancroft was asked several 11 yes. 11 questions at length about his declaration, and 12 Q. Thank you, Mr. Bancroft. I have no 12 him reading it off the record is clearly within 13 further questions at this time. Pass the 13 the scope of those questions. 14 witness, Mr. Zolotorev? 14 MR. ZOLOTOREV: Unless there is anything MR. ZOLOTOREV: Okay. I don't have any 15 15 else, Mr. Bancroft, thank you. 16 further questions for the witness at this time. THE VIDEOGRAPHER: Stand by, I'll take 16 17 As previously noted, there is a number of 17 us off the record. This marks the end of the 18 disputes and it's our position that the 18 deposition. We are going off the record at 19 deposition is not completed at this time, 19 12:47 p.m. Pacific Standard Time. 20 pending the resolution of those disputes. 20 (Deposition concluded at 12:47 p.m., With regard to my standing objection to 21 196) 22 all of the questions that elicited the witness 22 23 to read in verbatim paragraphs of the 23 24 declaration, my objection stands and we will be 24 25 moving to strike that testimony as improper,

25

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Transcript of John Bancroft September 2, 2022

50 (197 to 200)

Septement	7 2, 2022
197	
1 REPORTER'S CERTIFICATION OF CERTIFIED COPY	
2 REPORTER'S CERTIFICATION OF CERTIFIED COPY 3	
I, Debra Bollman Farfan, Registered Diplomate	
5 Reporter, Certified Realtime Reporter, and C.S.R. No.	
6 11648, in and for the State of California, do hereby	
7 certify:	
8 That prior to being examined, the witness	
9 named in the foregoing deposition was by me duly sworn	
10 to testify to the truth, the whole truth, and nothing	
11 but the truth; That said deposition was taken down by	
12 me in shorthand at the time and place therein named and	
13 thereafter reduced to typewriting under my direction,	
14 and the same is a true, correct, and complete	
15 transcript of said proceedings;	
I further certify that I am not interested in	
17 the event of the action. Witness my hand this 3rd day	
18 of September, 2022.	
19	
20	
21 22 Dh Love.	
Delay Dellay Franco CA CCD No. 11(40)	
 Debra Bollman Farfan, CA CSR No. 11648 RDR, RMR, CRR, CRC 	
25 RDR, RWR, CRR, CRC	
23	



CONFIDENTIAL - ATTORNEYS' EYES ONLY

Transcript of Ariela Tannenbaum

Date: August 25, 2022

Case: Advanced Cluster Systems, Inc. -v- NVIDIA Corporation, et al.

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Transcript of Ariela Tannenbaum August 25, 2022

1 (1 to 4)

	25, 2022		
1	3		
1 UNITED STATES DISTRICT COURT	1 INDEX TO EXAMINATION		
2 FOR THE DISTRICT OF DELAWARE	2 ARIELA TANNENBAUM		
3 ADVANCED CLUSTER SYSTEMS,) INC.,)	3 Thursday, August 25, 2022		
Plaintiff, Case No.:	4 Tammy Moon CSR No. 13184, RPR, CRR		
5) 19-02032-CFC-CJB v.)	5 WITNESS: ARIELA TANNENBAUM		
6) NVIDIA CORPORATION,)	6		
7 NVIDIA SINGAPORE PTE.) LTD, and NVIDIA)	7 EXAMINATION PAGE		
8 INTERNATIONAL, INC.,)	8 MS. DE LAZZARI 9		
9 Defendants.)	9		
10	10		
11	11		
12	12		
13 CONFIDENTIAL: ATTORNEYS' EYES ONLY	13		
14 VIDEOTAPED DEPOSITION OF ARIELA TANNENBAUM	14		
15 CONDUCTED VIRTUALLY	15		
16 August 25, 2022	16		
17 9:12 a.m.	17		
18	18		
19	19		
20	20		
21	21		
22 REPORTED BY:	22		
23 Tammy Moon, CSR No. 13184, RMR, CRR	23		
24 Appearing remotely from Carmichael, California	24		
25	25		
2	4		
1 REMOTE APPEARANCES:	1 INDEX TO EXHIBITS		
2 FOR PLAINTIFF:	2 ARIELA TANNENBAUM		
3 KNOBBE, MARTENS, OLSON & BEAR, LLP			
DV DEN K SUTBOUL 500	3 Thursday, August 25, 2022		
BY: BÉN K. SHIROMA, ESQ. 4 1925 Century Park East. Ste 600	Thursday, August 25, 2022 Tammy Moon CSR No. 13184, RPR, CRR		
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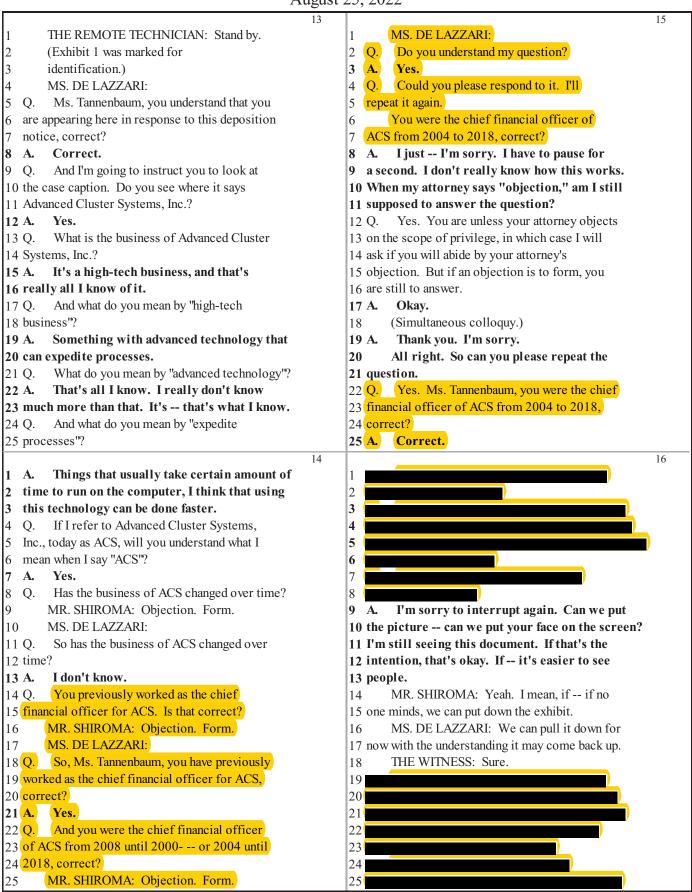
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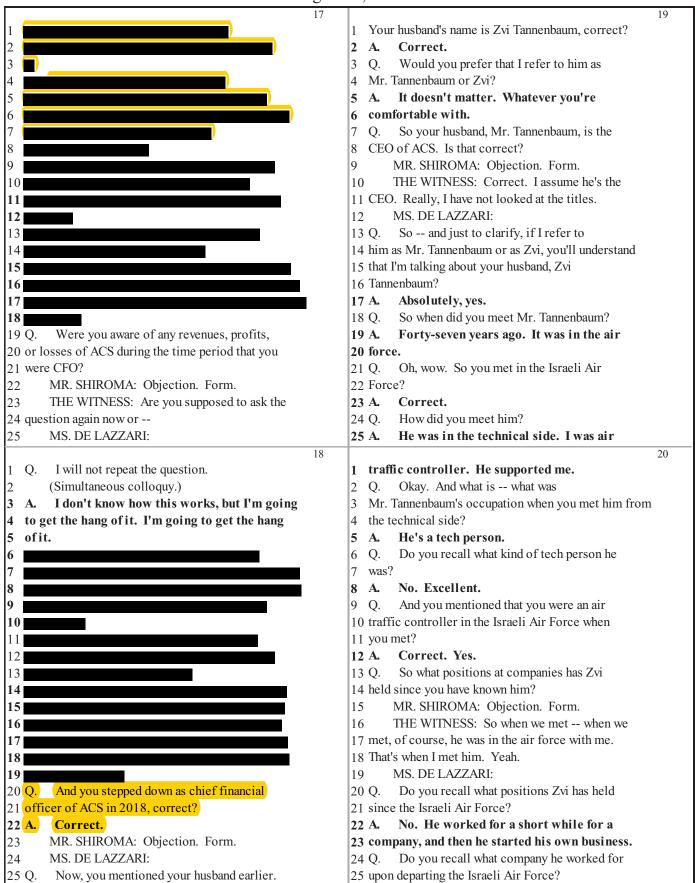
3 (9 to 12)

9	1 25, 2022	11
1 ARIELA TANNENBAUM,	1 A. In another room.	11
2 called as a witness, having been duly sworn,	2 Q. Do you have any methods of communicating	
3 testified as follows:	3 with others electronically during this deposition?	
THE WITNESS: I do.	4 A. No, I don't.	
5 EXAMINATION BY MS. DE LAZZARI, COUNSEL FOR NVIDIA	5 Q. Ms. Tannenbaum, are you currently on any	
6 CORPORATION, ET AL.	6 medication, under the influence of drugs or	
7 MS. DE LAZZARI:	7 alcohol, or is there any reason that you would be	
8 Q. Good morning, Ms. Tannenbaum. My name is	8 unable to testify truthfully and to the best of	
Monica De Lazzari, and I'm with the law firm DLA	9 your ability today?	
10 Piper, representing the NVIDIA defendants in this	10 A. No.	
11 action.	11 Q. Have you ever been deposed before?	
Could you please state your name for the	12 A. No.	
13 record.	13 Q. Have you previously been involved in any	
14 A. Ariela Tannenbaum.	14 litigation?	
15 Q. Where do you currently reside?	15 A. No.	
16 A. Newport Coast, California.	16 Q. So I'm going to go over a few ground rules	
17 Q. Could you please provide your complete	17 for today. So I ask that you answer all questions	
18 address.	18 verbally. We have a court reporter here today,	
19 A. 86 Sidney Bay Drive, Newport Coast,	19 and she cannot transcribe any head nodding or	
20 California.	20 shaking, so please answer every question verbally.	
21 Q. And sitting here today, where are you	21 You have been doing a great job of this so	
22 currently located?	22 far, but please speak slowly enough that the court	
23 A. In Knobbe Martens' building in Irvine	23 reporter is able to transcribe everything you say	
24 Irvine, California.	24 accurately.	
25 Q. Is anyone in the room currently with you?	25 A. Okay.	
25 Q. Is anyone in the room currently with you.	25 A. Oray.	12
1 A. Ben Shiroma.	1 Q. And given that there may be a lag with the	12
2 Q. And Mr. Shiroma is on camera?	2 video, please wait until I complete my question	
3 A. Yes.	3 before answering. I will wait until you finish	
4 Q. Do you have anything in front of you?	4 speaking until I ask the next question, and it is	
5 A. A cup of coffee and my glasses.	5 important that we do not accidentally speak over	
6 Q. You don't have any papers in front of you?	6 each other.	
7 A. No. Just	7 Since this deposition is taking place via	
8 (Simultaneous colloquy.)	8 video streaming, if there are any lags or if you	
9 Q. No notes in front of you?	9 would like a question repeated, please let me	
10 A. No.	10 know.	
11 Q. And do you have a computer in front of	11 Also, please let me know if you would like	
12 you?	12 a break. Otherwise, we will break roughly every	
13 A. No well, this.	13 one hour. If you would like a break, we will	
14 Q. So it's just a camera in front of you and	14 finish with the question that we are on and then	
15 a monitor?	15 proceed to take a break.	
16 A. Yes.	16 So, Ms. Tannenbaum, you understand that	
17 Q. Is anything else open on the monitor?	17 you are under oath and subject to the penalty of	
18 A. This thing that is getting ready to show	18 perjury, correct?	
19 me exhibits, I suppose, or documents.	19 A. Correct.	
	20 Q. And do you understand that you cannot	
21 share open in front of you?	21 discuss the substance of your testimony with your	
22 A. Right.	22 attorney at the breaks? Correct?	
23 Q. Do you have a cell phone?	23 A. Correct.	
24 A. Not with me.	24 Q. Okay. I'm going to ask the court reporter	
25 Q. Where is your cell phone?	25 to mark Tab 1 as an exhibit.	

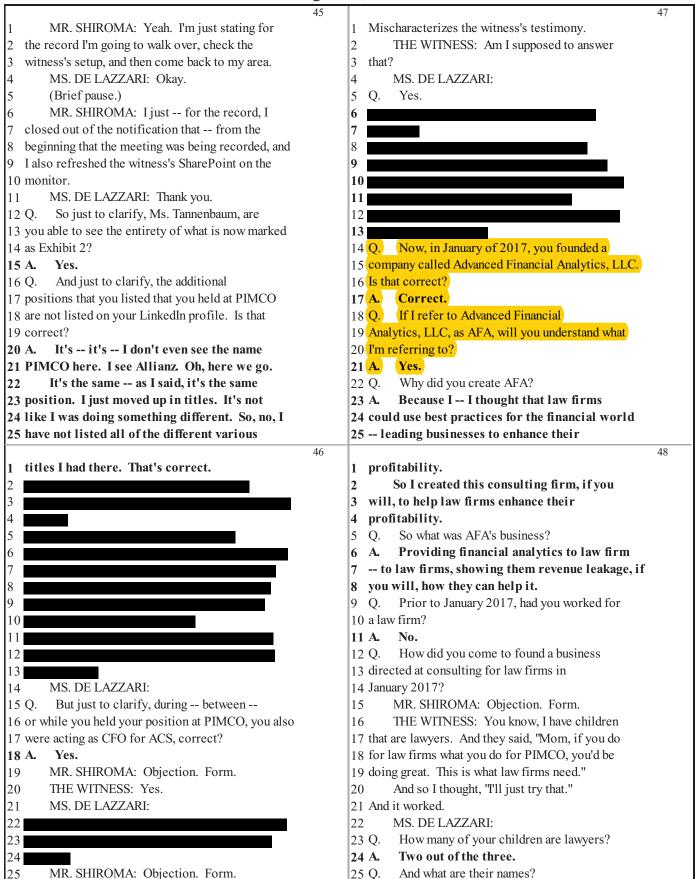
4 (13 to 16)



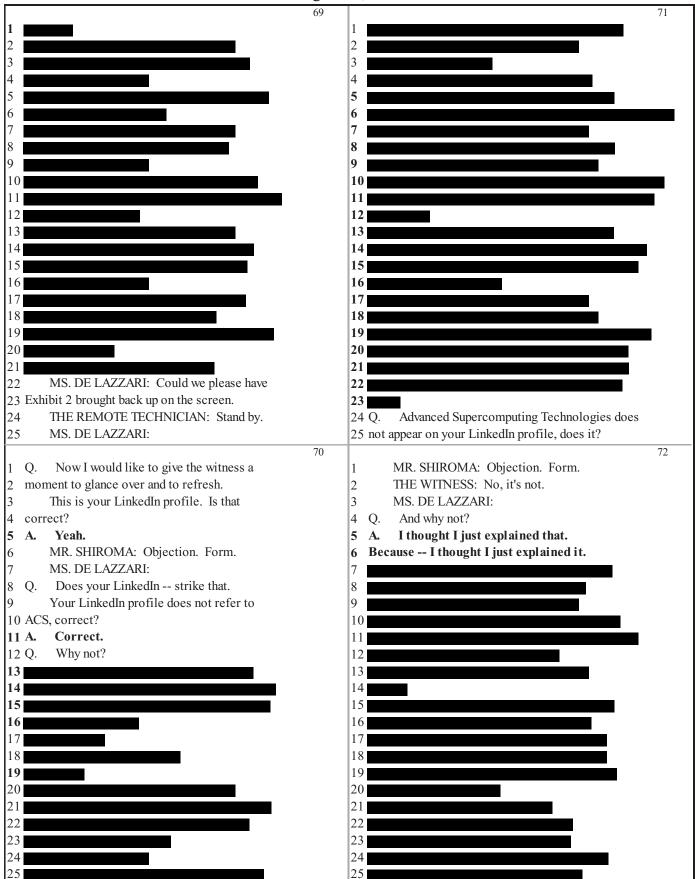
5 (17 to 20)



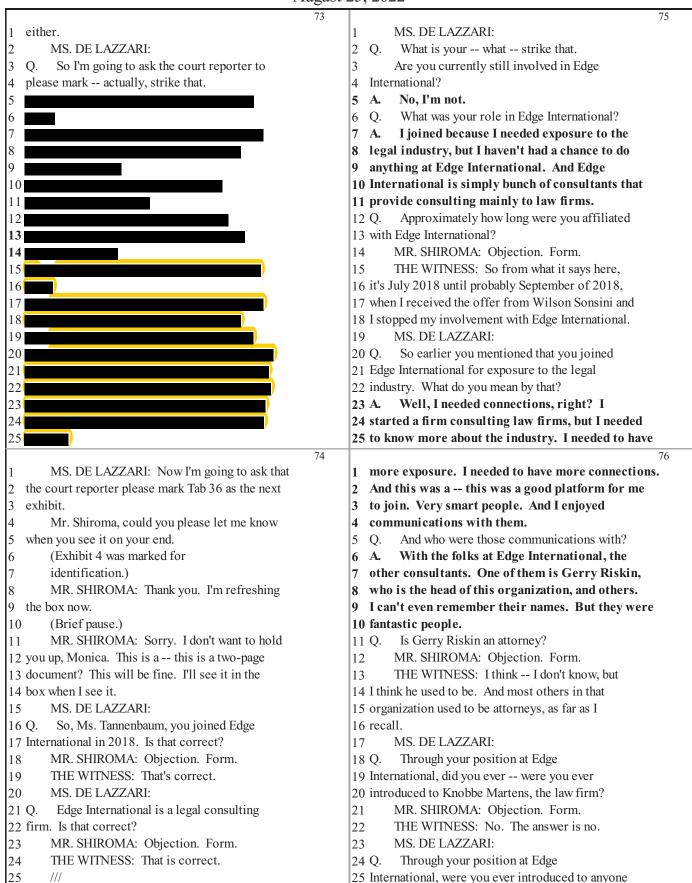
12 (45 to 48)



18 (69 to 72)



19 (73 to 76)

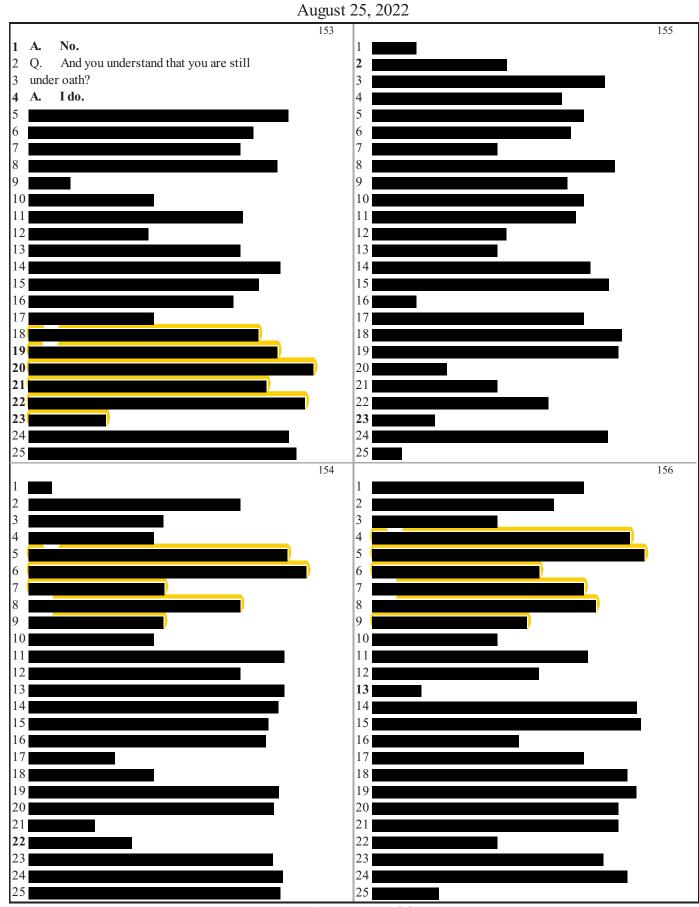


38 (149 to 152)

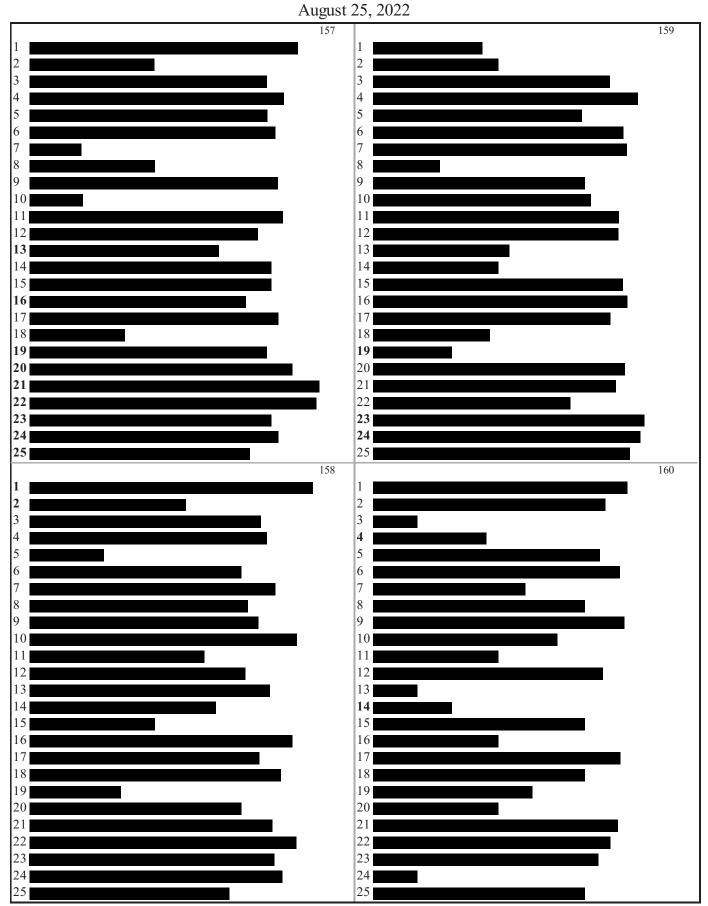
August 25, 2022

151 MR. SHIROMA: Objection. Form. 1 listed as an inventor when the application that 2 MS. DE LAZZARI: issued as the '080 patent was filed, correct? 3 Is this your signature? MR. SHIROMA: Objection. Form. Q. 3 A. THE WITNESS: I think that -- his name did And it is dated May 30th, 2007. Is that 5 Q. not show on the prior page, so I guess he wasn't. MS. DE LAZZARI: Could we please scroll to correct? 6 A. Correct. page two -- actually, three. One more. 8 Could you please read the line starting 8 Excellent. Thank you. Q. with "I believe." So, Ms. Tannenbaum, Dean Dauger was later MR. SHIROMA: Objection. Form. 10 added as an inventor to the '808 [sic] patent, 10 THE WITNESS: "I believe I am an original, 11 11 correct? 12 first, and joint inventor of the subject matter MR. SHIROMA: Objection. Form. 12 13 which is claimed and for which this patent is 13 THE WITNESS: I guess. His name is there. 14 sought on the invention entitled 'Clustered 14 It must be. I don't know. I don't know. 15 Computer System,' the specification of which was 15 MS. DE LAZZARI: 16 filed on September 26, 2006, as Application Serial 16 Q. Actually, let me correct that. There was 17 No. 11/527,319." 17 an error in inventorship with respect to Dean 18 Dauger in this patent. Is that correct? 18 MS. DE LAZZARI: MR. SHIROMA: Objection. Form. 19 O. When you --19 20 (Simultaneous colloquy.) 20 THE WITNESS: I don't know that. 21 Q. When you signed this on May 30th, 2007, 21 MS. DE LAZZARI: 22 did you believe that statement to be true? Do you recall why there was an error with 22 O. MR. SHIROMA: Objection. Form. 23 respect to Dean Dauger with inventorship of this 23 24 THE WITNESS: Yes. 24 patent? 25 25 MR. SHIROMA: Objection. Form. 150 152 MS. DE LAZZARI: THE WITNESS: No, I don't. 1 Q. And could you please read the line -- I MS. DE LAZZARI: I think we can break for guess paragraph starting with "I hereby declare." lunch now if we want to go off the record. Before MR. SHIROMA: Objection. Form. we go off the record, Ms. Tannenbaum, I just want 5 THE WITNESS: "I hereby declare that all to remind you not to speak with your attorney 6 statements made herein of my own knowledge are regarding the substance of your testimony today. true and that all statements made on information THE WITNESS: Okay. 8 and belief are believed to be true; and further, THE VIDEOGRAPHER: Okay. We're now going 9 that these statements were made with the knowledge 9 off the record. Time on the video monitor is 10 that willful false statements and the like so made 10 12:29 p.m. 11 are punishable by fine or imprisonment or both 11 (Lunch break taken.) 12 under Section 1001 of Title 18 of the United THE VIDEOGRAPHER: We're now back on the 12 13 States Code and that such willful false statements 13 record. Time on the video monitor is 1:16. 14 may jeopardize the validity of the application or MS. DE LAZZARI: 15 any patent issued thereon." 15 Q. Hi, Ms. Tannenbaum. Welcome back. I just 16 MS. DE LAZZARI: 16 want to confirm that you did not discuss the 17 Q. When you signed this on May 30th, 2007, 17 substance of your testimony today with your 18 did you understand the penalty for making a false 18 attorney over the lunch break. 19 statement before the U.S. PTO? 19 A. That's correct. And have you brought anything back in the 20 A. Yes. 20 Q. 21 MR. SHIROMA: Objection. Form. 21 room with you? Any papers? Notebooks? Your cell 22 phone? 22 THE WITNESS: Yes. 23 MS. DE LAZZARI: Could I please ask the 23 A. No, I did not. 24 court reporter to turn to page one of the PDF. 24 Q. And is anyone other than Mr. Shiroma in Now, Ms. Tannenbaum, Dean Dauger was not 25 Q. 25 the room with you right now?

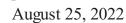
39 (153 to 156)

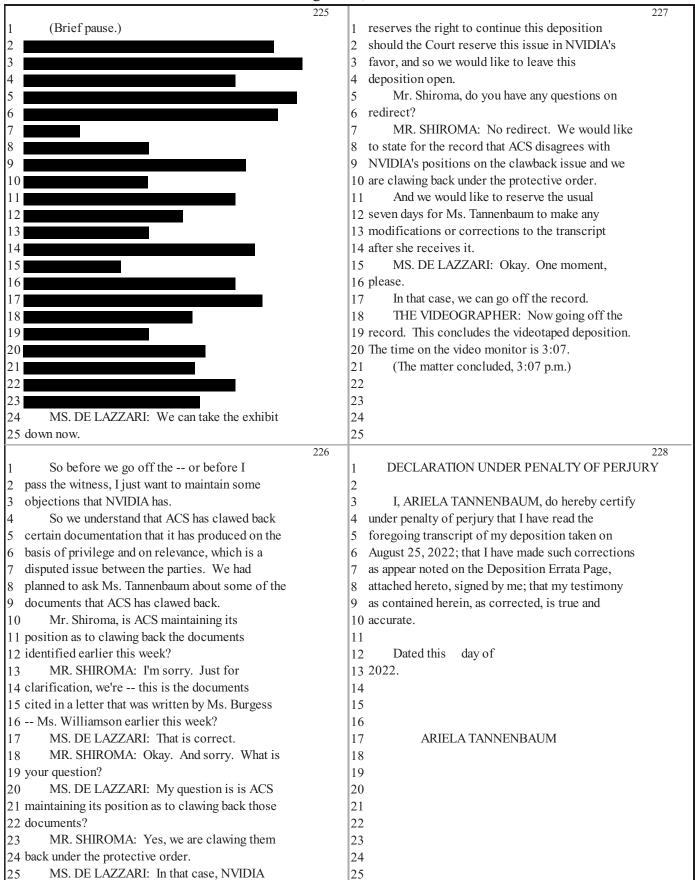


40 (157 to 160)



57 (225 to 228)





Transcript of Ariela Tannenbaum August 25, 2022

58 (229 to 232)

_		
1	STATE OF CALIFORNIA)	
)	
2	COUNTY OF SACRAMENTO) I, TAMMY MOON, CSR No. 13184, Certified	
3	Shorthand Reporter, do hereby certify:	
5	That prior to being examined, the witness	
6	in the foregoing proceedings was by me duly sworn	
7	to testify to the truth, the whole truth, and	
8	nothing but the truth;	
9	That said proceedings were taken remotely	
10	by me in shorthand and thereafter transcribed into	
11	typewriting under my direction and supervision;	
12	I further certify that I am neither	
	counsel for, nor related to, any party to said	
	proceedings, nor in any way interested in the	
	outcome thereof.	
16	In witness whereof, I have hereunto	
	subscribed my name.	
18	Dated: 27th of August, 2022	
19 20	1 22	
21	Jammy Moon	
22	Tammy Moon, CSR No. 13184	
23		
24		
25		
1	· · · · · · · · · · · · · · · · · · ·	

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

ADVANCED CLUSTER SYSTEMS, INC.,

Plaintiff,

Civil Action No. 1:19-cv-02032-MN-CJB

v.

NVIDIA CORPORATION, NVIDIA SINGAPORE PTE. LTD., AND NVIDIA INTERNATIONAL, INC.

Defendants.

DECLARATION OF CHERYL T. BURGESS IN SUPPORT OF PLAINTIFF ADVANCED CLUSTER SYSTEMS, INC.'S OPPOSITION TO DEFENDANTS' MOTION TO COMPEL PRODUCTION OF CLAWED BACK DOCUMENTS

I, Cheryl T. Burgess, declare as follows:

- 1. I am a partner with the law firm of Knobbe, Martens, Olson & Bear, LLP, counsel for Plaintiff Advanced Cluster Systems, Inc. ("ACS") in the above-captioned matter. I have personal knowledge of the matters set forth herein and if I am called upon to testify, I could and would testify competently thereto.
- 2. On August 26, 2022, I, Stephen Larson also of Knobbe Martens, and Ben Shiroma also of Knobbe Martens, met and conferred with counsel for NVIDIA Corp., NVIDIA International, Inc., and NVIDIA Singapore Pte. Ltd. (collectively, "NVIDIA"). Local counsel for both parties also attended.
- 3. At the August 26, 2022 meet and confer, the Parties discussed the privileged documents claw back issue only as it related to communications with non-attorneys and third-parties. Specifically, the discussion focused on communications with John Bancroft. The parties

did not explicitly discuss correspondence with Ariela Tannenbaum or Carmine Napolitano during the meet and confer.

- 4. At the August 26, 2022 meet and confer, the Parties did not discuss the contents of the clawed back documents. Specifically, the Parties did not describe the contents of the clawed back documents as NVIDIA describes them in its letter brief.
- 5. The August 26, 2022 meet and confer was the first time I understood that NVIDIA requested ACS's tax returns. Specifically, I understood NVIDIA to request ACS's tax returns
- 6. At the August 26, 2022 meet and confer,

 NVIDIA has since deposed ACS's corporate designees, and had the opportunity to inquire about whether additional financial
- 7. At the August 26, 2022 meet and confer, counsel for NVIDIA proposed that the Parties delay the filing of motions relating to ACS's issues also addressed that day in order to give the Parties more time to resolve the issues. After the meet and confer, I sent an email to NVIDIA in accordance with this proposal. I also proposed delaying the issue regarding ACS's production of tax returns, but NVIDIA declined.

documents exist.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on September 13, 2022 in Irvine, California.

Cheryl T. Burgess

Mey Buyer

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